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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

10-CR-74(JFB)

-against- United States Court
Central Islip, NY

HERIBERTO MARTINEZ,
CARLOS ORTEGA,

March 18, 2013
Defendants. 10:00 a.m.
-----X

BEFORE:

HONORABLE JOSEPH F. BIANCO
UNITED STATES DISTRICT COURT JUDGE
and a jury

APPEARANCES:

For the Government: LORETTA E. LYNCH
UNITED STATES ATTORNEY
BY: JOHN J. DURHAM, AUSA
CARRIE N. CAPWELL, AUSA
RAYMOND A. TIERNEY, AUSA
610 Federal Plaza
Central Islip, NY 11722-4454

For Defendant: ELIZABETH E. MACEDONIO, ESQ.
Martinez ARNOLD J. LEVINE, ESQ.

For Defendant: IRA D. LONDON, ESQ.
Ortega MARIANNE S. RANTALA, ESQ.

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United States District Court
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Central Islip, New York 11722
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Proceedings recorded by computerized stenography.
Transcript produced by CAT.

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M O R N I N G S E S S I O N

(Case called.)

(Appearances noted.)

THE COURT: The defendants are present with the assistance of the interpreters.

I just wanted to address the two open issues from Thursday.

I did receive the government's March 15th letter regarding the multiple conspiracies instruction, and Mr. Levine's letter objecting to this on March 17th.

With respect to Pinkerton, the objection is reserved for the record, and the defense continues to object for the reasons discussed on Thursday. However, I continue to believe that notwithstanding the Second Circuit decision in Carrillo, that Ruiz continues to be good law in the Circuit and, therefore, the government is entitled to that instruction.

The government indicated in its letter that it had decided only to seek that instruction with respect to the substantive counts relating to the Argueta murder. And, therefore, I have revised the charge to reflect only counts four through six. The government said counts three through six in its letter. And three is the conspiracy

1 count itself. So it should be only four through six. And 3111
2 as you see, I handed out to the lawyers, and now at
3 several parts of the charge it makes reference to only the
4 defendant Martinez, because it normally relates to the
5 defendant Ortega, because he is not charged in those
6 counts.

7 I also believe given the government's decision
8 that any subdivision of the verdict sheet is unnecessary
9 at this juncture.

10 Defense counsel -- obviously you continue to
11 object to the charge as a whole, but do you have any
12 objection to the revisions provided to you this morning?

13 MR. LEVINE: On the Pinkerton, you said Ruiz was
14 the current law. Do you mean Diaz?

15 THE COURT: Yes, Diaz, D-I-A-Z. Thank you. I'm
16 sorry.

17 Other than objecting to the charge itself, you
18 don't have any objection to the changes in the language?

19 MR. LEVINE: Right.

20 MR. LONDON: We have no objection.

21 THE COURT: Again, moving to the multiple
22 conspiracies letter, the language the defense submitted is
23 right out of Judge Sand. And I will not alter that. I
24 think it hits all the points the government is concerned
25 about, although it contains slightly different language.

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1 However, what I did again and provided to
2 everyone this morning is, I did add a sentence at the
3 bottom of page 84, going on to the top of page 85, that
4 says -- this is done to reflect back that we have a RICO
5 conspiracy charge here, Judge Sands' instruction doesn't
6 reflect that. And as the government pointed out, the case
7 law is clear that you can have different conspiracies
8 related to different racketeering acts within the RICO
9 conspiracy as a whole. So I believe that this additional
10 sentence properly reflects the law and is necessary so the
11 jury is not confused about the fact that there are
12 multiple independent predicate acts that are conspiracies
13 within the RICO.

14 Is there any objection to the addition of that
15 other language?

16 MR. LEVINE: No, your Honor

17 THE COURT: Does the government have anything
18 further on that?

19 MR. TIERNEY: No, your Honor.

20 THE COURT: Anything else before we begin
21 summations?

22 MS. CAPWELL: One request. It may be an hour
23 into my closing argument I believe is just when I wrapped
24 up the second murder. And if it is possible to just
25 take -- the Sandler murder, if we can take a short break

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1 at that point to stretch and get some water.

2 THE COURT: You think that is when?

3 MS. CAPWELL: About one hour.

4 THE COURT: You tell me when you get to that
5 point. And that sounds fine.

6 MS. CAPWELL: Thank you.

7 MR. LEVINE: A couple of minor things.

8 On page 38 of your charge, I think it is
9 paragraph 22, prior perjury. I'd ask that the last
10 sentence, you add the words, or her: It says it is
11 confusing as to how much of the testimony you wish to
12 believe, and you add, his or her testimony. Other places
13 you have that. And I'm concerned leaving that out here --

14 THE COURT: That is fine. I'll add that.

15 MR. LEVINE: The only other thing is when you
16 refer to the motive, to maintain or increase the position,
17 I think you left out -- I don't know if it is purposely or
18 not, but the word "his" maintain or increase his position.
19 I ask the word "his" be in there.

20 THE COURT: You persuaded me on that last week.
21 And we did change it in the beginning of that charge. You
22 wish it be changed throughout? Is that what you are
23 asking me to do?

24 MR. LEVINE: Every time that motive is
25 explicitly stated, I believe it should be stated

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1 accurately.

2 THE COURT: It will be in there each time that
3 it is referenced.

4 MR. LEVINE: Thank you.

5 THE COURT: Anything else, Mr. London, before we
6 bring in the jury?

7 MR. LONDON: No.

8 THE COURT: Lets bring in the jury.

9 MR. LONDON: Fine.

10 (Whereupon, the jury at this time entered the
11 courtroom.)

12 THE COURT: Please be seated.

13 Good morning, members of the jury.

14 It is good to see everyone this morning.

15 As you know, we are going to have the closing
16 statements this morning. And let me just explain to you
17 the order of summations.

18 I explained this to you in the beginning of the
19 case, but it is a long time ago.

20 The order is as follows: The government gets to
21 go first, followed by the lawyer for each of the
22 defendants. And then because the government has the
23 burden of proof, they get to have what is called a brief
24 rebuttal summation. So that is the order we will be
25 following.

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1 I want to give you three instructions regarding
2 the closing statements you should keep in mind during the
3 course of the closing statements.

4 First, closing statements, or summations, as
5 they are called, are not evidence. They are arguments as
6 to what the lawyers feel the evidence showed or did not
7 show. And you are free to accept or reject those
8 arguments. That is up to you.

9 The second thing is that if a lawyer makes an
10 argument regarding the evidence at trial and your
11 recollection of the evidence is different from what the
12 lawyer said the evidence was, it is your recollection that
13 controls, not what the lawyer says the evidence was.

14 Obviously if there is any doubt as to that
15 during your deliberations, you can ask me to have the
16 court reporter read back a portion of the testimony, or
17 ask for any exhibit that has been admitted into evidence.

18 Finally, the lawyers have seen my instructions
19 to you on the law, we went over that on Thursday. So
20 during their summations they may refer to, saying I expect
21 Judge Bianco will instruct you as to this.

22 Lawyers are permitted to do that. But I caution
23 you if they say something about the law and you hear my
24 instructions which is different from what the lawyer says,
25 it is obviously my instructions that you follow.

Summation/Capwell

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1 With those instructions we begin with the
2 summations, starting with the government.

3 Ms. Capwell.

4 MS. CAPWELL: Thank you, your Honor.

5 Good morning.

6 She put herself in that position. Words spoken
7 by this defendant, Heriberto Martinez, also known as
8 Boxer, to Carla Santos, to justify Vanessa Argueta's
9 murder at the hands of the MS-13.

10 We stole the show, words spoken by this
11 defendant, Carlos Ortega, also known as Silencio, to Jimmy
12 Sosa after he shot and killed David Sandler and left Aaron
13 Galan for dead.

14 The beast sucked him up, no one messes with the
15 MS-13.

16 Words spoken by the defendant Martinez and
17 others moments after they killed the bouncer, Nestor
18 Moreno, for having disrespected the MS-13.

19 People like that should not be in the Mara, we
20 have to kill him, words spoken by the defendant, Carlos
21 Ortega, before he, the defendant Martinez and others,
22 lured Baby Blue to the beach and butchered him to death.

23 Snitch, snitch, you are going to die, snitch,
24 words yelled by these two defendants in this building,
25 during this trial, to cooperating witness, Santos Joel

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1 Calderon.

2 When my colleague, Ray Tierney, spoke to you at
3 the beginning of this trial, he told you you will learn a
4 lot about the MS-13, and specifically that the sole reason
5 for its existence is to commit the types of ruthless
6 violence that is at issue in this case.

7 Over the course of the last five weeks, we have
8 proven beyond a reasonable doubt that the defendants are
9 guilty as charged.

10 Now, this morning I am going to review and
11 summarize some of the evidence that has been presented to
12 you over the last five weeks, evidence that establishes
13 the defendants' guilt to each and every count with which
14 they are charged in the indictment.

15 I will not have time to review all of the
16 evidence with you. But you have all been paying close
17 attention, and undoubtedly you will remember things that I
18 will not mention here to you today.

19 Once you begin your deliberations, we ask you to
20 consider all of the evidence in this case, and consider it
21 in the context of the legal instructions which Judge
22 Bianco will give to you tomorrow.

23 We are confident that as you do that, you will
24 conclude that each defendant is guilty as charged.

25 Now, before I outline the evidence that

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1 establishes each defendant's guilt beyond a reasonable
2 doubt, I need to briefly outline the charges in the
3 indictment. And my job is to summarize the evidence and
4 argue how it proves each defendant's guilt.

5 As Judge Bianco mentioned, it is his Honor who
6 instructs you on the law. But I will mention the law as I
7 talk to you about how the government has proven its case.

8 And as Judge Bianco told you, anything I say
9 about the law, if it is different from the instructions he
10 gives you tomorrow, you must of course follow his
11 instructions.

12 First I will discuss the counts that apply to
13 both defendants, Heriberto Martinez and Carlos Ortega, and
14 then I will discuss the charges against only Martinez and
15 then the counts as to only the defendant Ortega.

16 Both defendants are charged in counts one and
17 two, as well as counts 19 through 21 of the indictment.

18 As you can see on this slide, count one charges
19 racketeering, charge two charges racketeering conspiracy,
20 and counts 19 through 21 apply to the murder of Baby Blue,
21 Mario Quijada, the murder and the murder conspiracy.

22 Judge Bianco will instruct you in detail on the
23 law of racketeering and racketeering conspiracy.

24 We expect he will tell you in summary that the
25 government must prove that a racketeering enterprise

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1 existed, and that it affected interstate or foreign
2 commerce.

3 An enterprise is simply a group of people who
4 associated together for a common purpose.

5 The government must also establish that the
6 defendant participated in the affairs of the racketeering
7 enterprise through a pattern of racketeering activity,
8 basically that each defendant committed at least two
9 racketeering acts within ten years.

10 You will see on this slide under count one,
11 racketeering, there are five racketeering acts charged in
12 the indictment. The first one is the murder and murder
13 conspiracy of Vanessa Argueta, and both defendants are
14 charged in that racketeering act.

15 Racketeering act two is the murder and murder
16 conspiracy related to David Sandler, and only the
17 defendant Ortega is charged in that racketeering act.

18 Racketeering act three relates to the attempted
19 murder of Galan, and only applies to the defendant Ortega.

20 Racketeering act four is the murder and murder
21 conspiracy related to Nestor Moreno. And defendant
22 Martinez is charged in that one only.

23 And murder conspiracy racketeering act related
24 to Quijada, Baby Blue, and both defendants are charged
25 with that racketeering act.

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1 As to count two, the racketeering conspiracy,
2 Judge Bianco will charge you on the elements of that law,
3 we expect he will tell you a conspiracy is simply an
4 agreement between two or more people to commit a crime.

5 Thus, in basic terms for count two, the
6 government must establish that each defendant agreed to
7 participate with others in at least two of those
8 racketeering acts listed under count one.

9 Let's look now at the charges against only the
10 defendant Martinez.

11 Martinez is charged in counts three through
12 seven in connection with the conspiracy to murder and the
13 murder of Vanessa Argueta.

14 In count seven he is charged with being an
15 accessory after the fact to the murder of both Vanessa
16 Argueta and Diego Torres.

17 In counts 15 and 18 he is charged with
18 conspiracy to murder Nestor Moreno, the bouncer, and also
19 the murder of Nestor Moreno, as well as related firearm
20 charges.

21 Let's turn now to the charges against only
22 Carlos Ortega, counts eight through 14 of the indictment.
23 And they all relate to the conspiracy to murder David
24 Sandler, the murder of David Sandler, and the attempted
25 murder of Aaron Galan, as well as related firearms

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1 charges.

2 Judge Bianco is also going to charge you on the
3 law of aiding and abetting. It is a basic way of saying
4 helping out. It is the idea that if you help someone to
5 commit a crime, under the law you are responsible for that
6 crime, too.

7 Now, Judge Bianco will instruct you on the
8 specific elements you need to find with respect to each
9 count. And I will not go through all the elements.
10 Instead, what I want to do is to suggest a way for you to
11 go through all the evidence when you begin your
12 deliberations. And here are six questions for you to
13 consider:

14 Question one: Did the MS-13 racketeering
15 enterprise exist?

16 Question two: Did the MS-13 have some effect on
17 interstate or foreign commerce?

18 Three: Was each defendant a member of the
19 MS-13?

20 Four: Did the MS-13 engage in racketeering
21 activity?

22 Five: Was each defendant a member of the
23 conspiracy and did he help carry out the murders and other
24 crimes charged in the indictment?

25 And, six: Was one of the defendant's purposes

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1 in joining the conspiracy and helping to carry out the
2 murders and other charged crimes to maintain or increase
3 his position in the MS-13?

4 Ladies and gentlemen, we submit to you that the
5 evidence overwhelmingly establishes that the answer to
6 each and every one of those six questions is yes.

7 Let's start with the first question. Did the
8 MS-13 racketeering enterprise exist?

9 As Judge Bianco has told you, the indictment
10 charges that the MS-13 is what the law calls an
11 enterprise, which is what the Judge will tell you is
12 basically an organization, a group of people.

13 Clearly the MS-13 gang exists, and clearly it
14 existed back in January through March of 2010.

15 The evidence has shown that it is a large scale,
16 extremely violent international street gang.

17 You learned the gang started in Los Angeles,
18 California, that its leadership is in El Salvador. It has
19 members not only here on Long Island but across the United
20 States and also in Central America.

21 You learned that the MS-13 is divided into
22 cliques, and that those cliques exist not only here on
23 Long Island, some of those cliques are the Coronados Locos
24 Salvatruchas, the defendant Martinez' clique, and you
25 heard about a number of other cliques.

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1 You also know there are members of the MS-13 on
2 Long Island that belong to cliques that are based in
3 El Salvador, like the defendant Carlos Ortega. You
4 learned he is a member of the Sitios Locos Salvatruchas,
5 or STLS clique.

6 The MS-13 is a sprawling web of crime, an
7 organization that thrives on violence. And it has its own
8 rules, norms and expectations, and its members live, kill
9 and die by those rules.

10 Some of the rules.

11 Kill rival gang members. Don't abandon a fellow
12 gang member. Pay money to the cliques at meeting, and
13 don't cooperate with law enforcement.

14 Investigator George Davis, the first witness in
15 this case, through his testimony, we presented examples of
16 MS-13 tattoos, graffiti and hand signs, and the graffiti,
17 the tattoos and the hand signs are similar both here on
18 Long Island and El Salvador. And let's take a look at
19 some of those examples.

20 This slide shows you examples of tattoos of
21 individuals with tattoos in El Salvador.

22 The next slide are examples of tattoos on
23 individuals here in the United States.

24 This slide shows the examples of MS-13 graffiti
25 in the Long Island area.

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1 And we also presented through Investigator
2 George Davis this piece of MS-13 artwork from the jail.

3 As to hand signs, you will recall that witness
4 Carla Santos testified that she took these pictures on her
5 cell phone, and there are pictures including the defendant
6 in the blue and white sweatshirt, and the individuals are
7 making a number of the MS hand signs in these pictures.

8 During the trial you heard from four former
9 members of the MS-13 street gang as well as one female
10 associate of the gang.

11 You heard from Tony Guevera, also known as
12 Fantasma, who was arrested back in 2004.

13 You heard from Jimmy Sosa, also known as Junior.

14 You heard from Santos Joel Calderon, also known
15 as Gasparin.

16 You heard from Carlos Martinez, also known as
17 Carlitos.

18 You heard from Carla Santos, known as La Mania.

19 They told you about the history, the structure,
20 the rules and operations of the MS-13. You learned more
21 than you probably ever wanted or needed to know about
22 cliques, colors, tattoos, hand signs, graffiti, initiation
23 rituals, meetings, territory rivalries, Chavalas, a word
24 for rival, universals, clique treasuries and Esquina.

25 You learned cliques here on Long Island in the

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1 State of New York, they communicate with cliques in
2 El Salvador, and that the gang colors, the tattoos,
3 graffiti, the rituals and rules are the same here as they
4 are in El Salvador.

5 Cooperating witness Tony Guevera told you that
6 although there are separate cliques of the MS-13, the only
7 difference is clique letters, whether CLS, FLS, HLS, he
8 told you we are always MS-13.

9 He also told you that the Long Island cliques
10 interact with each other and gather together at meetings
11 called universals, where members of various New York
12 cliques come together to discuss MS-13 business, including
13 collecting more money, buying weapons, and killing
14 informants.

15 And Tony Guevera told you about one particular
16 universal meeting in Brooklyn that he attended during
17 which the police disrupted the universal meeting.

18 You might recall that Tony Guevera told you that
19 he and other MS-13 members fled up to the roof of the
20 building and started to throw guns off the roofs so the
21 police will not find those guns.

22 Here on the next slide are pictures of those
23 guns.

24 Now, when Judge Bianco instructs you on what a
25 racketeering enterprise is under the law, you will have no

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1 doubt that the MS-13 racketeering enterprise existed at
2 the time of these crimes.

3 Let's turn now to question number two.

4 Did the MS-13 have some effect on interstate or
5 foreign commerce?

6 Yes. You heard several examples of this during
7 the trial.

8 As to guns, you heard testimony that the MS-13
9 uses guns to hunt and to kill rival gang members, as well
10 as to kill anyone else who disrespects the gang or any
11 member who dares to violate one of the main rules of the
12 MS.

13 You heard one of the main reasons that cliques
14 collect money is to purchase guns.

15 And Charles Hopkins, the ballistics examiner
16 from the Suffolk County crime lab, who testified last in
17 this case, told you that the .22 caliber firearm he
18 examined, the one recovered on the beach in Far Rockaway
19 after Baby Blue's murder, was manufactured in California.

20 You also heard testimony from Detective Rottler
21 of the Suffolk County Police Department, and he told you
22 that he seized two firearms on January 5th, 2010 in the
23 woods in Medford. He told you about a .22 caliber rifle
24 as well as this .38 caliber revolver.

25 You might recall that he told you that this .38

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1 caliber revolver was made in Brazil.

2 He also told you that he arrested two
3 individuals that night in connection with the shooting.
4 One of the men arrested was Sparky, who was Carla Santos'
5 former boyfriend.

6 You might recall that Ms. Santos testified in
7 order to help her boyfriend, she gave the CLS clique some
8 money so that the CLS clique can pay back the Surenos
9 clique for the .38 revolver that the CLS clique had
10 borrowed and the revolver was then recovered by the
11 police.

12 In maintaining an arsenal of weapons, and you
13 heard some of which made their way to New York from across
14 the country, and even South America, the MS-13 has some
15 impact on interstate and foreign commerce.

16 You also heard testimony from witnesses about
17 MS-13 members fleeing New York when they get in trouble.
18 They flee to other states, and sometimes they flee all the
19 way to El Salvador, by traveling across state lines and
20 foreign lines the MS-13 affects commerce.

21 For instance, in this case you know after the
22 murders of Vanessa Argueta and Diego Torres, the shooters,
23 Cruzito, Gringo and Zorro fled New York to Texas and
24 crossed into Mexico and then made their way down to
25 El Salvador.

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1 You also heard that the MS-13 sends money by
2 wire transfer down to El Salvador, and know that Boxer
3 directed Carla Santos to send CLS clique money via wire
4 transfer to Cruzito, Gringo and Zorro in El Salvador after
5 they killed Vanessa Argueta and Diego Torres. And this
6 shows at the top, this slide shows you the two wire
7 transfer receipts that Ms. Santos received after wiring
8 money down to El Salvador for those three men.

9 In the lower part of the slide you see a picture
10 of the El Rancho Bar, with -- including the Heineken and
11 Corona brand, and you heard Ms. Ventura, the waitress,
12 told you that at the bar she sold international beers,
13 Heineken, Corona, etcetera.

14 You also learned from Ms. Ventura and the young
15 waitress from El Rancho, Jessica Herrera, who testified
16 before you that the business shut down shortly after the
17 shooting.

18 As to telephone calls, the government also
19 presented evidence that the MS-13 members here on Long
20 Island routinely stay in contact with the MS-13 members in
21 El Salvador and in other states, we produced a massive
22 amount of telephone records showing interstate and foreign
23 contacts, going various ways. The government has
24 established beyond a reasonable doubt that the MS-13 has
25 some effect on interstate or foreign commerce.

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1 Let's turn now to question number three.

2 Was each defendant a member of the MS-13?

3 Again, yes. The government has established this
4 fact beyond a reasonable doubt.

5 Lets start first with the defendant Heriberto
6 Martinez, also known as Boxer.

7 You know he was a member of the MS-13 in several
8 different ways. First of all, you were shown pictures of
9 his tattoos. And this slide shows you the large LA, for
10 Los Angeles, tattoo on his left chest, which is in blue
11 and white. And you also can see in the bottom left
12 picture a tattoo of the inside of his middle finger with
13 the initials CLS, for Coronados Locos Salvatruchas, which
14 was the defendant's clique, and you know he was a leader
15 of that clique.

16 You see on the bottom right slide the bloody 503
17 tattoo.

18 We also showed you pictures of the defendant and
19 his clothing and here we notice he is wearing the blue and
20 white sweatshirt, which I believe Ms. Carla Santos told
21 you was his favorite sweatshirt, and he is wearing the
22 baseball cap with the Los Angeles insignia and he is also
23 making the MS hand signs.

24 You also heard at the trial from Special Agent
25 Edward Heslin from the FBI. He transferred Boxer from

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1 Rikers Island jail to Long Island for FBI processing and
2 for Boxer's appearance in federal court. And that was on
3 April 23 of 2010.

4 And Special Agent Heslin interviewed Boxer, and
5 during that interview Boxer admitted to Agent Heslin he
6 was a member of the Coronados clique of the MS-13.

7 I encourage you to ask for Special Agent
8 Heslin's testimony to be read back to you, as Boxer
9 admitted to Special Agent Heslin his participation in the
10 Vanessa Argueta murder and the Moreno murder.

11 Now, cooperating witnesses, Sosa, Gasparin,
12 Carlitos and Ms. Santos, all told you that Boxer was not
13 only a member of the MS-13 but a leader of the Coronados
14 clique.

15 You saw pictures of the defendant Ortega's
16 tattoos during the trial. These are his hands, and you
17 can see the letters MS on the top left picture. On the
18 right you can see the MS on his right hand, on the
19 defendant's fingers. On the left hand you can see the
20 STLS, which stands for Sitios, Locos, Salvatruchas.

21 You also know from cooperating witnesses Sosa
22 and Santos told you that Ortega's nickname was Silencio,
23 and he was from the STLS clique.

24 In addition, this belt came into evidence,
25 Government's Exhibit 268. And you learned that the FBI

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1 arrested the defendant on or about March 26, 2012, and
2 when the FBI arrested the defendant Ortega, he consented
3 to a search of his room, and during the search the agents
4 recovered this belt that you can see says El Salvador, and
5 over here it says El Satanas Vive.

6 You heard a lot of testimony during this trial,
7 and you know that MS-13 members basically consider
8 themselves to be aligned with Satan.

9 Special Agent Tariche of the FBI told you that
10 during the same search of the defendant Ortega's room,
11 they found a shoe box containing paperwork. One of the
12 items there was a letter addressed to Sy Len.

13 The letter is on the left, in Spanish. On the
14 right is the translation prepared by the government during
15 this trial. And you will see there some different
16 references. We have blown up some of the writing, so tell
17 him La Mara Salvatrucha says hi.

18 At the end of the letter before the writer signs
19 off, he says another thing, when you write back, don't
20 make any marking of the Mara, because they won't give them
21 to me.

22 Then you can see some of the artwork in the
23 letter.

24 You see the large MS, right there, the MS, and
25 then you see in smaller print the STLS. Again, for the

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1 defendant Ortega's clique, Sitios Locos Salvatruchas.

2 Again, cooperating witnesses Gasparin and
3 Carlitos told you that before they met the defendant,
4 Carlos Ortega, in March, on March 16th, 2010, Boxer told
5 them that a big hommie from El Salvador was coming over
6 and was doing an inspection of the SLS Clique to see how
7 it was being run. And this hommie from El Salvador was
8 the defendant, Carlos Ortega.

9 Question four: Did the MS-13 engage in one or
10 more of the following racketeering activities?

11 The indictment charges that the MS-13 engages in
12 acts and threats involving murder; extortion and robbery
13 in violation of the laws of the State of New York; witness
14 tampering; witness retaliation; and drug trafficking in
15 violation of federal law.

16 Of course, the MS-13 engages in racketeering
17 activity. It is absolutely clear from all the testimony
18 you heard that the MS-13 engages in acting and threats
19 involving murder.

20 The sad reality that the five victims in this
21 case are not the first and not the last victims in Queens
22 or Long Island to be killed by the MS-13.

23 Through the evidence you have learned that the
24 MS-13 considers itself to be at war with rival gangs, who
25 they refer to as Chavalas, the 18th Street gang, the

Summation/Capwell

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1 Bloods, the Crips, the Latin Kings, and the MS-13 often
2 goes hunting for the Chavalas.

3 You learned that MS-13 uses threats of murder to
4 keep the gang intact and to insulate it from investigation
5 by law enforcement.

6 Every MS-13 member understands from the time
7 they enter the gang, any member who assists or cooperates
8 with law enforcement will be killed.

9 You have learned that every cooperating witness
10 who testified at trial understands a green light has been
11 placed on them, meaning, in essence, that they are to be
12 killed on site by any MS-13 member.

13 You might also recall when Carla Santos
14 testified, she told you how Boxer wanted her to kill an
15 MS-13 member nicknamed Sonic who had been green lighted
16 for being a police informant. This was going to be her
17 entrance test to the MS-13

18 What did she tell you why Boxer wanted her to
19 join the MS-13? Because she knew too much.

20 Cooperating witnesses Jimmy Sosa and Carlos
21 Martinez told you how the MS-13 in El Salvador collects
22 rent or extortion money from businesses

23 And you know from the testimony from various
24 witnesses that the MS-13 sells drugs and commits robberies
25 to make money for the gang.

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1 In terms of witness retaliation and
2 intimidation, you heard from cooperating witness Calderon,
3 also known as Gasparin, while in the courtroom to testify
4 both defendants yelled at him, snitch, snitch, you are
5 going to die, snitch.

6 Question five: Did the defendants commit the
7 charged violent crimes?

8 Again, the evidence overwhelmingly establishes
9 that the answer is yes. This is the heart of the case

10 Let's look at each of the charged crimes

11 We will start first with the murder of Vanessa
12 Argueta.

13 You know from the testimony and the evidence
14 that Vanessa Argueta had been in a romantic relationship
15 with Cruzito, a member of the Coronados Clique of the
16 MS-13

17 Things went south between Vanessa and Cruzito,
18 and Cruzito believed that Vanessa took members of the
19 rival 18th Street Gang to his house to attack him

20 Carla Santos told you how Cruzito, Zorro and
21 Gringo spoke to Boxer by speakerphone while Ms. Santos was
22 present and debriefed Boxer, the leader of the CLS Clique,
23 regarding the situation of Vanessa and the 18th Street
24 gang.

25 She told you that Boxer told Cruzito, Zorro and

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1 Gringo, fix it, and do what you have to do

2 With those words, Boxer, as the leader of the
3 Coronados Clique, sanctioned the murder of Vanessa
4 Argueta, who had disrespected Cruzito and the MS-13 by
5 sending rival gang members over to Cruzito's house.

6 And you will recall how the bodies of Vanessa
7 Argueta and Diego Torres were found.

8 Jose Avila, a Spanish speaking worker, testified
9 here before you as he was walking to work on the morning
10 of February 5, 2010 and took his usual shortcut through a
11 wooded area in Central Islip.

12 But this was no ordinary morning, and it was a
13 morning that Mr. Avila will remember for the rest of his
14 life. Because along the wooden path were two bodies lying
15 among the leaves.

16 After seeing the bodies, Mr. Avila ran to work,
17 got his supervisor, and they returned to the crime scene.

18 They called nine one one and law enforcement
19 took over the scene.

20 Later that day the Suffolk County crime lab
21 found three .22 caliber casings at the scene, and Dr. Hall
22 found the .22 caliber bullet in the clothing of Diego
23 Torres, which the crime lab collected.

24 This slide shows you the yellow placards, 6, 9
25 and 23, marking the three .22 caliber casings located at

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1 the scene of that crime.

2 And I'll talk more about this a little later,
3 but you will recall from the testimony of the government's
4 last witness, ballistics examiner Charles Hopkins, that he
5 compared those three casings, right here, that were found
6 at the Argueta murder scene, and compared it against the
7 casing from the Moreno murder scene at the El Rancho Bar,
8 and the casings that he test-fired, and he test-fired them
9 from this weapon, the .22 Jennings which was found on the
10 beach in Far Rockaway

11 What did he tell you? They all matched, all the
12 casings were fired by the same gun.

13 Now, what happened after the murders of Vanessa
14 Argueta and Diego Torres?

15 The first thing in the morning after they were
16 murdered, Boxer called Ms. Santos and told her to go to
17 Baldwin. Ms. Santos followed Boxer's directions and
18 picked up Cruzito at the laundromat in Baldwin.

19 She told you Cruzito broke down crying in front
20 of her and admitted he shot and killed Vanessa Argueta.

21 Over the next couple of days, Boxer used
22 Ms. Santos to shuttle the three men around on February 6
23 and 7. She drove them to Boxer's apartment in Far
24 Rockaway where they spent a night. The next day Boxer
25 summoned her to Far Rockaway to pick up Cruzito, Gringo

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1 and Zorro.

2 They spent the next night at a motel in
3 Farmingdale, which Ms. Santos put under her own name.

4 You will see the receipt or the registration
5 card from the Sky Motel with Ms. Santos' name on
6 February 6th, 2010, what she received from the hotel for
7 two nights.

8 On February 7 Boxer had her bring the three men
9 back to Boxer's building in Far Rockaway. She had to
10 return to Far Rockaway yet again that day when Boxer
11 directed that she take the three men to the Bronx where
12 they would be catching a transport van out of the state.

13 And she spoke to Cruzito, Zorro and Gringo when
14 they traveled and learned they were in Texas and crossed
15 into Mexico and finally arrived in El Salvador.

16 After they left New York, Ms. Santos had a
17 conversation with Boxer about Vanessa's murder, and Boxer
18 told her that Vanessa put herself in that position.

19 In other words, Vanessa's murder was justified.

20 Boxer also had Ms. Santos send Coronados Clique
21 money to Cruzito, Zorro and Gringo in El Salvador, which
22 she did on February 23 in two wire transfers. The same
23 receipts you saw earlier, from February 23, 2010. And
24 Ms. Santos also told you that the names Cruzito, Gringo
25 and Zorro's names do not appear as a recipient on these

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1 receipts because the police were looking for them. And
2 she was provided with names for other people in
3 El Salvador that would come and pick up the money for
4 them.

5 You might also recall that cooperating witness
6 Carlos Martinez, also known as Carlitos, told you that
7 Boxer gave Cruzito and Zorro and Gringo some money and
8 Boxer's telephone number so when they arrived in
9 El Salvador they would be able to give Boxer's number to
10 the MS-13 leadership there, and Boxer would serve as a
11 reference for Cruzito, Zorro and Gringo, essentially to
12 vouch for them as tried and true MS-13 members. And in
13 that way the three men would receive help from the MS-13
14 in El Salvador.

15 And Gasparin told you that he met Cruzito and
16 Gringo and Zorro in Far Rockaway when they were on the run
17 from the police.

18 Gringo admitted to Gasparin that they killed two
19 people, including a girl Cruzito had dated who sent 18
20 Street Gang member to Cruzito's, and also that he used the
21 silver .22 caliber gun that was used to kill Nestor Moreno
22 at the El Rancho Bar.

23 Boxer told Gasparin that he agreed with the
24 murder of Vanessa; she deserved it for having brought 18th
25 Street gang members over to Cruzito's house.

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1 What other evidence do you have?

2 You have the statement that Boxer gave to the
3 Suffolk County Police Department on March 17th, 2010.
4 That is Government's Exhibit 115-A. And he made a number
5 of admissions when he spoke to the Suffolk County Police
6 Department, right after his arrest at the beach in Far
7 Rockaway.

8 He told the detectives that Cruzito is MS-13
9 from the CLS Clique. He said that Cruzito told him that
10 Vanessa had tried to have Cruzito killed, and that Cruzito
11 told him that he was going to get a gun to kill Vanessa.

12 Boxer even admitted that he saw the gun used to
13 kill Vanessa, a small silver handgun, before she was
14 killed.

15 When Detective Ralph Rivera asked Boxer to
16 clarify which gun Boxer was referring to, Boxer told
17 Detective Rivera, this is the gun I had this morning,
18 referring back to the gun he had at the beach in Far
19 Rockaway when they killed Baby Blue.

20 That is the gun that jammed when Payaso tried to
21 shoot Baby Blue.

22 Boxer further admitted that Cruzito, Zorro and
23 Gringo came to Boxer after they killed Vanessa and Diego
24 and told him what they had done.

25 What did Boxer leave out of the statement?

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1 That as the leader of the CLS Clique, he
2 sanctioned Vanessa's murder. That he told Cruzito to go
3 to obtain the gun. And he left out he helped the three
4 men flee New York.

5 As I mentioned earlier, about a month later on
6 April 23, 2010, Special Agent Heslin of the FBI was tasked
7 with transporting Boxer from Rikers Island to Long Island.

8 Agent Heslin interviewed Boxer on that day. And
9 these are a few of the things that Boxer told Special
10 Agent Heslin.

11 He told him that a fellow MS member contacted
12 Boxer, looking for a gun that had been used by the MS-13
13 in other murders, and that this same fellow MS-13 member
14 wanted to kill a woman who was looking to set him up for
15 attack by rival gang members.

16 Boxer told the MS member that he did not have
17 the gun, but directed him to the individual who did have
18 the gun.

19 And he also told Special Agent Heslin that he
20 learned that the girl as well as the second victim had
21 been killed, and he let the three shooters stay with him
22 until they left the United States.

23 Now, what other evidence did the government
24 present?

25 We presented you with a chart of phone records,

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1 phone contacts. And this chart summarizes phone contacts
2 between Boxer, Cruzito, Vanessa, Gringo and Zorro.

3 Now, the first time you saw this phone chart
4 when it came into evidence, we were not permitted to show
5 you the names associated with the telephone numbers. So
6 when you first saw this chart, it looked a little
7 different. It only had phone numbers, no names.

8 Now during summation we are permitted to show
9 you the chart with the names associated with those phone
10 numbers.

11 It might have been a little frustrating for you
12 when you heard the testimony and followed the charts
13 without knowing who was using what phone.

14 Now, when you deliberate, and should you want to
15 see the phone charts again, you will be receiving the ones
16 that came into evidence. So they will be the phone charts
17 that do not have the names. They will only have the phone
18 numbers. I'm only permitted to use these with you during
19 summations.

20 Of course, you're welcome to take notes during
21 summation if that is what you wish to do.

22 How does the government know that certain
23 individuals were using certain telephone numbers listed in
24 the charts?

25 We have proved it to you a number of different

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1 ways.

2 You will remember Special Agent Tariche
3 testified that he reviewed Carla Santos' phone and wrote
4 down names and corresponding numbers from her contacts
5 list.

6 Ms. Santos had Boxer's phone number listed as
7 (516) 244-0046. Ms. Santos had defendant Ortega's number,
8 Silencio's number listed as (631) 645-1384. And she had
9 many more names and numbers in her phone. For Cruzito,
10 for Gringo, for Zorro.

11 As to Silencio's number, you will also recall
12 Special Agent Tariche found T Mobile phone bills in Carlos
13 Ortega's room on these bills here.

14 Although the bills were not in his name, instead
15 of in the name of Luis Queme. You will recall that
16 Mr. Queme came here to testify and told you he used to
17 work with the defendant Ortega, and he had put -- he had
18 basically set up a phone line for Mr. Ortega and put it in
19 his own name, and it was the same phone number,
20 (631) 645-1384.

21 You also heard testimony from Detective Robert
22 DiPietro of the Nassau County Police Department. He told
23 you that he reviewed Diego Marroquin's cell phone. And
24 you will remember he used to use the nickname Little
25 Lonely. He reviewed his cell phone after Diego was

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1 arrested on March 17th, 2010 at the beach in Far Rockaway.

2 You might remember that Diego Marroquinn is
3 Carlos Martinez' brother.

4 Detective DiPietro wrote out a list with names
5 and numbers from Diego Marroquin's contact list and Diego
6 had the same phone number for Boxer, (516) 244-0046.

7 He had Baby Blue's number as (347) 994-4893.

8 When Boxer was interviewed by the Suffolk County
9 Police Department, he provided his cell phone number as
10 (516) 244-0046.

11 And so through various pieces of evidence,
12 including the voluminous phone records, and the government
13 has proven who was using each phone through the phone
14 numbers listed. Not only this chart, but the other charts
15 that came in evidence which you will see later in my
16 summation.

17 As to this specific chart, you will see that
18 there were contacts between Vanessa Argueta and Cruzito,
19 eight contacts between February 4 and 5th. And you will
20 see between Cruzito and the defendant Boxer there were
21 eleven contacts between February 4th and February 5th.

22 This chart also shows you that Gringo and Zorro
23 remain in contact with the defendant Boxer in the days
24 immediately following the murders of Vanessa Argueta and
25 Diego Torres.

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1 Based on all of this evidence, the government
2 has established beyond a reasonable doubt that the
3 defendant, Heriberto Martinez, conspired to murder Vanessa
4 Argueta and murdered Vanessa Argueta as an aider and
5 abettor, and was an accessory after the fact to the
6 murders of both Vanessa Argueta and Diego Torres.

7 Let's turn now to the murder of David Sandler.

8 Cooperating witness Jimmy Sosa, also known as
9 Junior, gave you the inside perspective of the murder of
10 David Sandler and the attempted murder of Aaron Galan.

11 He told you that on February 17, 2010, Silencio,
12 Perdido, who was an MS-13 member from the Karlington
13 Clique, and Michichi drove to Sosa's home to pick him up.

14 You heard the Michichi name a lot. He was an
15 MS-13 associate, chauffeur, and drives the dark blue Ford
16 Explorer and drove the MS-13 members around.

17 On that day, Michichi was driving the dark blue
18 Ford Explorer he was always driving, and Perdido told Sosa
19 that he was looking for Chavalas, and he has a doll in the
20 car, meaning a gun.

21 Perdido took out the .38 caliber gun, and the
22 men drove around looking for Chavalas but couldn't find
23 the particular Chavalas.

24 Sosa asked then if they could stop at a deli to
25 get a drink or something to eat, that was the excuse he

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1 had given his girlfriend, you will remember, why he went
2 out to these guys.

3 That stop at the deli on Timberline Drive in
4 Brentwood led to the end of David Sandler's life and
5 almost to the end of Aaron Galan's life, because when Sosa
6 and Perdido went into the deli, Perdido saw David Sandler,
7 whom he believed to be a member of the rival street gang,
8 the Latin Kings. And Perdido told Sosa that Sandler was a
9 Chavala and Sandler had problems with the MS-13 in the
10 past.

11 Perdido also told Sosa Sandler sold weed,
12 marijuana, and Sosa could approach Sandler and ask for
13 some weed.

14 Sosa went back into the deli and approached
15 Sandler and asked him if he sold weed.

16 Sandler said yes but he didn't have any on him
17 right then. And Sosa asked for David Sandler's phone
18 number.

19 While Sosa and Sandler were in the deli
20 together, Sosa called Sandler's cell phone, so Sosa would
21 have Sandler's number in the phone.

22 When Sosa and Perdido got back in the truck,
23 they were in there with Silencio and Michichi. And they
24 discussed that Sandler was a Chavala and they formulated
25 the plan to kill him.

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1 Together they decided that Sosa should get
2 Sandler to meet Sosa outdoors near a Compare Foods store.

3 Sosa called Sandler, called the Sandler phone
4 and spoke to whom he assumed was Sandler; but as you know
5 from Aaron Galan's testimony, it was actually Aaron Galan
6 who picked up the cell phone because he and David shared
7 the phone for their drug business.

8 Galan told Sosa he would meet him at the deli on
9 Timberline Drive, not the location Sosa had suggested.

10 You might recall when Galan testified, he
11 testified on the first day of trial, and it has been a
12 while, you might recall that he felt the caller was trying
13 to get him to go to a dark desolate area and Galan refused
14 to do that. And he suggested a deli up the street from
15 his home where he and Sandler shared an apartment, because
16 it was close to home and he knew the location and knew
17 people were always in that deli.

18 As Michichi and Perdido and Silencio and Sosa
19 drove toward the deli, Sosa called Sandler's phone again
20 and was told by a male on the other line that he would be
21 there in a few minutes and for Sosa to wait.

22 Silencio and Sosa got out of the car to do the
23 job, to kill Sandler, whom they believed to be a Chavala.

24 And why were Silencio and Sosa the ones to kill
25 Sandler and not Perdido?

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1 Sosa told you why. Because he and Silencio were
2 from El Salvador and needed to prove themselves to the
3 local MS-13.

4 Both Silencio and Sosa were wearing hoodies when
5 they got out of the car, and Silencio had the .38 caliber
6 gun on him.

7 As Sosa and Silencio started walking south on
8 Timberline Drive toward Second Avenue, Sosa saw Sandler
9 with another person walking toward them from Second
10 Avenue.

11 Sosa told you when he got close to Sandler, he
12 handed him a \$20 bill for the deal and asked Sandler for
13 the marijuana. And that is when Silencio shot Sandler, as
14 he was pulling the marijuana out of his pocket.

15 Galan started running toward the soccer facility
16 and Silencio shot Galan. Galan fell to the ground.

17 Silencio went right over to Galan and pointed
18 the gun at him and shot him at close range.

19 Silencio and Sosa then took off running north
20 back to where they came from to the top of Timberline
21 Drive and turned left behind the big soccer arena there
22 and jumped into Michichi's truck.

23 In the car Silencio told Sosa, we stole the
24 show.

25 Later that night Silencio called Sosa and asked

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1 him whether he had seen the news on the television that
2 Sandler was dead?

3 Silencio told Sosa, I hit him in the head.

4 Soon after the shootings, paramedics and law
5 enforcement arrived at the scene and Mr. Galan was taken
6 to Good Samaritan Hospital, where against all odds he
7 survived being shot in the head at close range.

8 And you know Jimmy Sosa is telling you the truth
9 about what happened on the night of February 17, 2010,
10 because his testimony is corroborated by several other
11 pieces of evidence.

12 Surviving victim Aaron Galan's testimony about
13 the telephone calls he received that evening and what
14 happened when he went with Sandler on what would prove to
15 be Sandler's last marijuana deal.

16 You also remember eyewitness Mark Moorman's
17 account of the shooting. You will remember he was a very
18 tall man who was helping to run the girl's soccer
19 tournament at the KK Athletics facility. He had gone out
20 to his car which was parked along Timberline Drive facing
21 south outside the sidewalk of KK Athletics and saw two men
22 with hoodies walking down Timberline Drive.

23 While he was in his car putting something in his
24 glove compartment, he heard a pop and looked up and he
25 told you he saw four individuals, and one already on the

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1 ground.

2 He also saw one of the men holding his arm out
3 extended and he could see muzzle fire from the end of the
4 extended arm.

5 He heard four or five shots that night.

6 He saw a second individual retreating west,
7 trying to get away. You know that's Aaron Galan.

8 Mr. Moorman admitted to you he was frightened
9 and ducked down in his car for what felt like an eternity
10 to him. When all sounded quiet, he got out of his car and
11 headed back into KK Athletics and to tell somebody to call
12 nine one one and to stop the players and the parents from
13 coming outdoors.

14 Let's take a look at the next slide showing you
15 the intersection of Timberline Drive and Second Avenue.

16 Now, at the scene of the crime, law enforcement
17 recovered a number of items. They recovered a number of
18 very small little baggies containing marijuana.

19 They also recovered Aaron Galan's cell phone.
20 You might remember it is the one with the cracked screen.

21 They recovered a bloody \$20 bill, which was part
22 of the marijuana deal.

23 The slide here shows you the two different areas
24 where the victims were laying.

25 The one here in the middle of Timberline Drive,

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1 David Sandler. And over closer to the curb and the
2 sidewalk coming out of Timberline, out of KK Athletics, is
3 where Mr. Galan was.

4 You also remember that the crime lab found a .38
5 caliber expended bullet in the parking lot in front of the
6 beauty supply store close to the intersection of
7 Timberline Drive and Second Avenue.

8 You also know that about four days later, after
9 most of the snow had melted -- you will recall there was a
10 lot of snow on the ground on the night of February 17,
11 2010. And after it melted, a second crime scene unit went
12 to the crime scene and searched along Timberline Drive for
13 additional evidence, and Police Officer Jodi Rios told you
14 that during that search she found a second .38 caliber
15 expended bullet right a few feet away from the stop sign
16 on Timberline Drive and Second Avenue.

17 And you will recall that Roy Sineo, the first
18 ballistics expert from the Suffolk County Crime Lab who
19 testified, told you as to both bullets they were of a .38
20 or 357 class caliber, six lands and grooves with a right
21 hand twist of conventional rifle.

22 Mr. Sineo explained that the base of a .38
23 caliber and .357 caliber bullet has the same diameter.

24 He told you both bullets could have been fired
25 from the same weapon, and the bullets were almost

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1 certainly fired from a revolver and not a pistol.

2 Some key evidence that came from the defendant
3 Ortega, Silencio himself.

4 When Ortega was arrested by the FBI Gang Task
5 Force on March 26, 2012, he gave them permission to search
6 his room.

7 We discussed the letter to Sy Len found in the
8 shoe box.

9 In addition, the agents found in that shoe box a
10 Spanish language news article from February 17th through
11 the 23rd, 2010, and this article discussed, basically
12 reported the shooting, the murder of David Sandler and the
13 shooting of a second individual.

14 And the fact that Ortega was holding on to that
15 article in the shoe box with other documents he considered
16 important showed you that this article to him was like a
17 trophy for what he had done, when he stole the show.

18 Now, on that same day when he was arrested, he
19 was interviewed by the FBI, Special Agent Tariche. And
20 here is an excerpt from his statement.

21 Another night Michichi picked up Junior and
22 Perdido in the car. They were looking for rival gangs and
23 using Junior's cellular telephone. They called the Latin
24 Kings that sold marijuana. Junior and I got out of the
25 car and I was carrying a .38. I fired the .38 at the

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1 Latin King when we went to buy the marijuana. I fired at
2 two of them and we then ran to the car. Michichi then
3 dropped me off at home.

4 Ladies and gentlemen, it doesn't get much
5 clearer than that.

6 We gave you more at trial. And we also gave you
7 a phone records chart. Again, now the chart shows the
8 names associated with the phone number.

9 You can see here the chart shows you contacts
10 between Carlos Ortega, and Junior, and this chart reflects
11 calls around the time period from February 14th to about
12 the 19th. You see contacts between Sosa, also known as
13 Junior, and the defendant, Ortega. You also see contacts
14 between Sosa and Michichi, the driver. And importantly
15 you see here between Sosa and Aaron Galan, there were
16 three calls. And you know they all were from Sosa to the
17 Aaron Galan phone, which was also used by David Sandler,
18 so we could have David Sandler's name there also.

19 You know that these three calls corroborate what
20 Jimmy Sosa told you and what Aaron Galan told you.

21 The first call at 7:14 p.m., the call inside the
22 deli when Sosa first met Sandler and called Sandler to
23 kind of let him have his phone number in his phone.

24 Then you know the second call at 8:05 is the
25 call that Mr. Galan actually answered, and that is the

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1 call when Sosa and Galan discussed where they were going
2 to meet for the drug deal. And that is where Galan said,
3 I'm not going to a dark desolate area. We will meet at
4 the deli by my street.

5 Then you will see there is a third call at 8:11,
6 a short call lasting a few seconds, and it is the one when
7 Sosa called to say I'm here. And then the male on the
8 other end, whether Galan or Sandler, basically said I will
9 be right there.

10 You will recall when Aaron Galan testified, we
11 introduced some screen shots from Mr. Galan's phone,
12 actually from this phone with the cracked screen. And you
13 will recall that those three calls are in this phone, and
14 that the first call, the 7:14 call, reflects Sosa's phone
15 number. But the second two calls at 8:05 and 8:11 are
16 both blocked calls, show up as blocked calls on the cell
17 phone. And also when Special Agent David Edwards
18 testified before you from the FBI, and he is the witness
19 through whom all these phone charts came in, Agent Edwards
20 told you in the phone records it also reflects that those
21 two calls, 8:05, 8:11 p.m. from Sosa to the Galan/Sandler
22 phone, were blocked calls.

23 So in summary, the government has established
24 again, beyond a reasonable doubt, that the defendant
25 Carlos Ortega conspired to murder David Sandler, murdered

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1 David Sandler and attempted to murder Aaron Galan.

2 Your Honor, may we have a break at this point?

3 THE COURT: Yes, we will have a morning break.

4 Do not discuss the case.

5 (Whereupon, at this time the jury leaves the
6 courtroom.)

7

8 (Whereupon, a recess was taken.)

9

10 THE COURT: Please get the jury.

11 (Whereupon, the jury entered the courtroom.)

12 THE COURT: Please be seated.

13 All right, Ms. Capwell.

14 MS. CAPWELL: Thank you.

15 Let's turn now to the murder of Nestor Moreno
16 that arose from an altercation between the bouncer and
17 Boxer and three other members of the MS-13 members at the
18 El Rancho Bar a couple of weeks after.

19 In essence, the bouncer had disrespected Boxer
20 in front of the members of MS-13.

21 You know that on or about February 20, Martinez
22 went out drinking in Hempstead with other MS-13 members,
23 Gasparin, Pollo and Guanaco.

24 They ran into a man named Princesa, who offered
25 to buy them drinks, at the El Rancho Bar. And when it

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1 came time to pay for the beers, Princesa was no longer
2 around and the MS-13 group tried to leave without paying
3 their tab.

4 That is when the dispute arose between the
5 bouncer and the group of MS guys, who let it be known to
6 the bouncer they were MS.

7 It culminated in the bouncer using pepper spray
8 on Boxer's face, and Boxer was angry. And he told the
9 bouncer, things will not end here.

10 On March 6, Boxer kept that promise. With
11 Michichi at the wheel, he returned to the El Rancho Bar
12 with Demente, Carlito and Gasparin. He told them that
13 Gasparin will identify the bouncer because Gasparin was
14 there the night of the altercation, and they would shoot
15 the bouncer for disrespecting him.

16 Demente, who was holding the .22 caliber gun.
17 Carlito and Gasparin followed Boxer's orders and headed
18 toward the El Rancho Bar.

19 However, the bar and the street were busy that
20 night, and they called Boxer to let him know that there
21 were too many people to shoot the bouncer that night.

22 Boxer didn't care. Shoot him.

23 The three men returned in Michichi's truck and
24 again explained to Boxer that the street and the bar were
25 very busy that night.

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1 Again, Boxer didn't care, he wanted the bouncer
2 dead that night.

3 So the obedient foot soldiers, Demente, Carlito,
4 Gasparin, returned to the bar, opened the door wide open,
5 and Demente shot Moreno in the middle of the forehead,
6 right between the eyes.

7 Jessica Herrera, the young bartender who
8 testified, ran to Nestor Moreno. She told you he was
9 lying on the floor and bleeding from the middle of his
10 forehead.

11 Nassau County Police Department crime scene
12 detective Joseph Marino recovered a .22 caliber casing
13 from the entryway of the El Rancho Bar.

14 The lower left slide marked right there by the
15 yellow placards.

16 He told you he also recovered out on the
17 sidewalk in front of the El Rancho Bar two items. He
18 recovered a cell phone battery case, the back cover, I
19 should say, and the battery itself.

20 And you know from Gasparin and Carlitos'
21 testimony that Carlito was carrying Gasparin's phone that
22 night, and as Carlito ran and fled from the bar after the
23 shooting, he dropped Gasparin's phone on the sidewalk, and
24 Gasparin stopped and tried to pick up his phone, and he
25 did pick up his phone but left two pieces behind.

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1 When Demente, Carlitos and Gasparin got back to
2 Michichi's truck, the group was excited, yelling the beast
3 sucked up the bouncer, La Mara, La Mara, the Coronados
4 Surenos are united. No one messes with Mara.

5 The group then headed to Suffolk County to drop
6 off Demente and the gun, the same .22 caliber gun.

7 Boxer, Carlitos and Gasparin ultimately returned
8 to Far Rockaway where they lived.

9 Now, what other evidence is there?

10 Besides all the testimony that you heard about
11 what happened at the El Rancho Bar on March 6, 2010, you
12 also have seen cell site diagrams that Eduardo Orellana
13 testified about, and this is this diagram here. The maps
14 showing the cell phone towers, this is the Far Rockaway
15 area.

16 You will recall when you initially had seen the
17 diagram in evidence, it only had the phone numbers on it.
18 Now I'm able to show you the person's name that goes along
19 with that phone number.

20 You will see Boxer in orange. That is his
21 phone.

22 Then you see Gasparin as the hot pink color.

23 Demente is the brown color.

24 Basically what this slide is showing you,
25 between 9:00 p.m. to 10:17 p.m. on the night of March 6th,

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1 2010, those three phones are bouncing off of cell sites in
2 the Far Rockaway area.

3 This map also shows you the approximate location
4 of defendant Martinez' residence in Far Rockaway, as well
5 Santos, Joe Calderon's residence in Far Rockaway.

6 Now, this next slide is another diagram of a
7 cell site location data, and this covers a broader time
8 period. It covers 8:54 p.m. that night to 11:23 p.m., and
9 it pertains to the same three numbers, the Boxer phone,
10 Gasparin's phone and Demente's phone, and basically
11 showing you movement from south to north during that time
12 period.

13 In particular between about 11:03 -- I should
14 say about 11:00 and 11:20 that night, the phones are
15 bouncing off a cell site tower right near the El Rancho
16 Bar.

17 Indicated in red is the El Rancho Bar, and you
18 see the calls between 11:00, 11:20 that night bouncing off
19 the cell phone tower in the area, the very close vicinity
20 to the El Rancho Bar.

21 Let me go back to that same slide to show you
22 something else.

23 You will see it indicates in pink, Gasparin's
24 phone, three calls placed from Gasparin's phone between
25 11:03 and 11:05 p.m., and they were bouncing right off the

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1 cell site tower near El Rancho.

2 If you look at the corresponding data from
3 Boxer's phone, you will see he received five calls, and
4 three were the same phone, the ones from Gasparin's phone,
5 also bouncing off the same cell phone tower near
6 El Rancho.

7 You will learn that those calls are most likely
8 the ones while Gasparin, Carlitos and Demente, and they
9 were walking in front of the bar waiting for the
10 opportunity to shoot the bouncer. You will learn from
11 Carlitos they had contact back with Boxer, one of those
12 calls, to tell Boxer it was very busy that night, and that
13 shows you one of those calls.

14 This next diagram shows you a time period later
15 that night, a very narrow time period, 11:44 to
16 11:59 p.m., and this chart just reflects Boxer's phone and
17 shows you that at that time, between those times, 11:44
18 and 11:59, his phone was bouncing off of cell phone towers
19 in the Brentwood and Central Islip areas, which
20 corroborates what the cooperating witnesses told you, that
21 right after the murder of the bouncer, they headed toward
22 Suffolk County in Michichi's truck.

23 Again, another slide, basically midnight to
24 1:50 a.m., now going into the early morning hours of
25 March 7th, 2010. And here we see Boxer's phone, Demente's

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1 phone in brown, and then we see a new phone, Michichi's
2 phone in blue. And this diagram is basically showing you
3 between that time period those three phones are bouncing
4 off cell site towers in the Brentwood and Central Islip
5 areas.

6 Next, this now is 2:50 a.m. on March 7th,
7 throughout that whole day, and really of significance here
8 is Boxer's phone in orange. You can see that at about
9 2:50 a.m. in the morning he received a call. And at that
10 point the call was bouncing off of a cell site tower back
11 in Far Rockaway where he lived. So by that point in the
12 night he was back in Far Rockaway.

13 That is not all the evidence. The defendant
14 Martinez admitted to the Nassau County Police detectives
15 that he had the bouncer killed in retribution for
16 disrespecting Boxer and the MS-13.

17 This was a statement that Boxer gave on
18 March 18th, 2010 to the Nassau County Police Department,
19 and I will read some of the excerpts that have been pulled
20 from this statement.

21 It is a six-page statement.

22 One Sunday, toward the end of February 2010, I
23 received a call from my friend, who is named Henry. Henry
24 is called El Pollo.

25 The taxi dropped us off in front of a bar called

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1 El Rancho that is on Fulton's Street. El Pollo's friend
2 was already there waiting for us.

3 The four of us entered El Rancho. When we went
4 in we sat on a table, and a faggot, excuse the language,
5 whom they call Princesa offered to buy us some beers.

6 The statement goes on.

7 The security guard pulled out a pepper spray and
8 sprayed it on my face and I was blinded.

9 Then it goes on later on in the statement.

10 One Saturday, in the beginning of March 2010, I
11 called Skrapo. You will recall it was Demente's nickname,
12 meaning someone who likes the ladies. I told him to come
13 pick me up with Michichi, who is another friend of ours,
14 with a dark Explorer. At about 10:00 p.m. Skrapo and
15 Michichi arrived. They said they were going to Brentwood.
16 But first we went to pick up Gasparin and another one who
17 is named Carlitos. Michichi wanted to go to Brentwood,
18 but I told him I wanted to go by El Rancho in Hempstead.

19 Michichi drove to El Rancho and parked the
20 Explorer near El Rancho. At that time Gasparin took out a
21 knife that he had, and El Skrapo took out a small silver
22 .22 caliber pistol from the pocket of his jacket. Skrapo,
23 Carlito and Gasparin got out of the Explorer. I told him
24 I was going to be on watch, and that I knew Hempstead
25 better than they did, and I will show them how to get out

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1 of Hempstead faster. I also told him that I would be
2 recognized in El Rancho, and that Gasparin knew the
3 security guard. I told him to shoot him. But if they
4 couldn't, to return to the Explorer. Michichi and I
5 stayed in the Explorer.

6 After a short while I heard a shot and Skrapo,
7 Gasparin and Carlito came running. Skrapo said everything
8 went fine. Gasparin was worried. Because he said that he
9 had dropped the cover and battery to his telephone. We
10 left Hempstead, but Gasparin wanted to return to find the
11 battery.

12 Michichi and I said no.

13 While we in the Explorer, Skrapo said that he
14 had shot the security guard in the head. Gasparin told me
15 that he opened the door so that Skrapo could shoot him
16 while Carlitos was behind Skrapo.

17 Ladies and gentlemen, the government has proven
18 beyond a reasonable doubt that defendant Heriberto
19 Martinez was hired to murder Nestor Moreno and aided and
20 abetted his murder.

21 Turn to the next murder in this case of Mario
22 Quijada, also known as Baby Blue.

23 You heard a lot of evidence and heard testimony
24 in connection with Baby Blue's murder, and both of the
25 defendants' participation in his murder.

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1 Here is some of the highlights:

2 On March 16th, 2010, Diego Marroquin told his
3 brother Carlitos that he had a discussion with Smokey, who
4 was one of the leaders of the Surenos Clique, and that
5 discussion was about Baby Blue.

6 As you recall, Baby Blue was a member of the
7 Surenos or SLS Clique.

8 Smokey told Diego Marroquin that they should
9 give Baby Blue one more chance to kill somebody, but that
10 if Baby Blue failed to do so, they should kill Baby Blue.

11 A number of MS-13 members met up that night,
12 including both defendants, Boxer, Silencio, also Baby
13 Blue, Demente, Gasparin, Marroquin and Carlitos. And also
14 their associate and chauffeur, Michichi.

15 All but Baby Blue knew that this was a life or
16 death test for Baby Blue. And to use Mr. Levine's words,
17 this was a blind test for Baby Blue.

18 Now, Michichi drove. He drove Baby Blue,
19 Silencio, Demente and Gasparin around Far Rockaway,
20 looking for Chavalas to shoot and kill.

21 While that group was out hunting for Chavalas to
22 shoot and kill, Boxer, Carlitos and Diego Marroquin stayed
23 behind and met up with Payaso and his friend Gabriel at
24 the train station.

25 Later that night they all came back together at

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1 the Payaso apartment, except for Baby Blue.

2 Silencio reported that Baby Blue would not hold
3 the gun and that he had to be killed.

4 Boxer was worried that if Baby Blue was ever
5 arrested, he would turn into a snitch.

6 The MS-13 members decided and agreed that night
7 that Baby Blue had to be killed.

8 Marroquin called Baby Blue with a ruse and told
9 him that they would all go to the beach in Far Rockaway to
10 kill some Chavalas.

11 A new group headed out to pick up Baby Blue to
12 kill him. They consisted of both defendants, Boxer and
13 Silencio, also Payaso and Marroquin, of course Michichi at
14 the wheel.

15 Carlos, Gasparin and Demente stayed behind at
16 Payaso's apartment.

17 Once at the beach, Payaso aimed the gun at Baby
18 Blue's head and pulled the trigger, but the gun jammed.
19 That's when Baby Blue realized he was about to be killed
20 by his own fellow gang members. So he began to run.

21 Boxer took out the machete and hit Baby Blue on
22 the head. Boxer then gave the machete to Payaso and took
23 the gun from Payaso, the same silver .22 gun.

24 Silencio and Diego each had a knife, a pocket
25 switchblade knife and a kitchen knife with a wooden

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1 handle.

2 The group repeatedly stabbed Baby Blue and
3 prevented him from getting away. They stabbed him to
4 death on the beach that night.

5 Fresh off this kill of a fellow MS-13 gang
6 member, the group started to walk back to Michichi's
7 truck. That is when they saw NYPD officers.

8 Payaso and Silencio, you learned, started
9 running down the beach eastward and they got away.

10 You learned that they went to Lorena Cifuentes'
11 home in Inwood where they used her phone.

12 If you recall, Ms. Cifuentes described the two
13 men as being wet and sandy.

14 In the early morning hours Silencio and Payaso
15 got back to 22-30 Mott Avenue, where Silencio, Demente and
16 Marroquin were living at the time.

17 Silencio and Demente took a cab back out to
18 Brentwood, getting off at 7-Eleven.

19 Within a few days the FBI arrested Payaso,
20 Carlitos, Gasparin and Demente. Silencio was arrested
21 about a year ago, in late March 2012.

22 Now, how do you know that what the cooperating
23 witnesses Gasparin, Carlitos and Carla Santos have told
24 you about the murder of Baby Blue is true?

25 You know this by looking at all of the other

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1 evidence.

2 Let's look now to pictures from the crime scene.

3 Now, in the background in this slide is a sketch
4 prepared by the NYPD crime scene unit, to orient you to
5 this area is the water, the ocean. We have the beach, the
6 ocean, we have two sand dunes there, more beach, and the
7 steps going to the boardwalk and parking lot. You will
8 see the truck is Michichi's truck where it was parked
9 where the NYPD found it.

10 You will see the little figure here is supposed
11 to depict Baby Blue's body and he was over here by the
12 left sand dune. You will see a weapon was found south of
13 Baby Blue's body, and it was this blade from a knife.

14 Now, over to the right side by the right sand
15 dune, you heard that the NYPD found a pocket switchblade
16 knife about in that location.

17 Then Detective Broderick saw the machete in the
18 water the next day and waited for the tide to recede and
19 then recovered that machete.

20 You heard from the evidence that the two
21 individuals who ran east on the beach when they saw the
22 New York Police waiting for them, were Payaso who had the
23 machete and Silencio, so it stands to reason that Silencio
24 was carrying the pocket knife that night.

25 You learned that the police recovered the silver

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1 Jennings that we have here, right at the base of the steps
2 from the beach heading up to the boardwalk.

3 You also know that after Michichi's truck had
4 been moved, the NYPD found a wooden handle that belonged
5 to this blade here underneath where Michichi's truck had
6 been parked.

7 That is not all. You will recall we also showed
8 you surveillance footage from the apartment building at
9 22-30 Mott Avenue. And it was the apartment building
10 where Payaso and Marroquin and Carlitos lived. That image
11 showed you images of individuals going in and out of the
12 lobby and up into the elevator.

13 The cooperators told you who those people were.
14 And these were photos, you will remember the government
15 also put still photos in evidence from the video, in
16 evidence as well. And I have a few of those here to show
17 you in my summation.

18 But the video and the photos basically
19 corroborate the account from the cooperators who were
20 involved that night and who decided to kill Baby Blue and
21 basically the activities that happened at or about the
22 times described to you.

23 The first image here shows you it was about
24 11:31 at night. This is the lobby of the building, and
25 the cooperators told you it is Payaso. After him the

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1 defendant Boxer, wearing that favorite blue and white
2 sweatshirt, and Carlitos with the hood, and after that his
3 brother, Marroquin, and then Gabriel.

4 Now, this next slide shows you that same group
5 in the elevator, just about a minute later, and we have
6 Payaso by the door, Carlitos, in the corner with the blue
7 and white cap, the defendant Boxer, to his left Gabriel
8 and to his left Marroquin.

9 This is when this group came back from the train
10 station.

11 Then after Diego and Carlitos got out of the
12 elevator, a minute later you see a side profile shot of
13 the defendant Boxer and Payaso to his left and Gabriel in
14 the other corner.

15 This is now just after midnight, so it is a
16 little later that evening, and this is when the other
17 group was getting ready to leave the building and go pick
18 up Baby Blue to take him to the beach to murder him.

19 Now in the elevator you see right by the
20 elevator door the defendant Silencio, and to Silencio's
21 right Michichi, the driver.

22 Here the baseball cap again, the defendant
23 Boxer. Then to Boxer's right is Diego Marroquin.

24 Then we see the same group getting out of the
25 elevator, and you see walking first there is Boxer with

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1 his blue and white cap.

2 You notice here he is no longer wearing the
3 favorite blue and white party sweatshirt. He has now
4 changed into a solid dark blue sweatshirt. Gone from his
5 party clothes to his killing clothes, he certainly doesn't
6 want to get his favorite sweatshirt dirty or full of
7 blood.

8 After Boxer we have Silencio, and after that
9 Michichi and Diego Marroquin in the background.

10 It shows the four individuals leaving the
11 building, and then Diego Marroquin in the background. You
12 see the defendant Boxer wearing the tan work boots that
13 came into play later with the DNA analysis.

14 You will remember from the other photos and
15 video that Payaso then joins the group and you see him
16 coming out of the building a minute later. And you see
17 Diego Marroquin holding the door open and you will
18 remember Payaso runs out and joins the group.

19 Now, again, the video, the photographs,
20 corroborate what the corroborating witnesses told you
21 about who planned to kill Baby Blue that night, and the
22 sequence of events that happened that night.

23 Let's turn now to the following slide.

24 You will recall Dr. Coleman, the medical
25 examiner from the City of New York, came to testify. She

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1 conducted the autopsy of Baby Blue, and these photographs
2 show you again that what the cooperating witnesses are
3 telling you and what is evidence shows you is right.

4 You know Baby Blue was attacked by a number of
5 people who were using different types and different shapes
6 of weapon. And you know that through the injuries he
7 sustained.

8 Dr. Coleman told you he sustained a stab wound
9 to his left eye. He also sustained two major stab wounds
10 to his front chest, as well as a smaller wound to his
11 right biceps, and it is hard to see in here but he also
12 has a very small incision or puncture wound on his right
13 rib cage. You can also see some of the bruising or trauma
14 on the neck that Dr. Coleman told you about.

15 Going down to the bottom right picture, you can
16 see this is a major stab wound, his bottom right back.
17 And then you can see a number of other wounds. Here you
18 see it, an incision wound on his top left shoulder area.
19 You see a number of wounds here toward the lower back,
20 incision wounds.

21 Then now going to the bottom left picture on the
22 screen, that is an image of his right torso. You see his
23 right armpit, and you see more wounds here. You see
24 incision wounds, at least three. And another one, hard to
25 see but right more on his waistline or stomach area here.

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1 These photos don't even capture all of the
2 wounds that Baby Blue sustained that night. You have to
3 look at the body diagrams that Dr. Coleman prepared. And
4 she told you she highlighted, the yellow highlighting is
5 the major stab wounds, the blue is all the other incision
6 and puncture wounds. You will see on the top of Baby
7 Blue's head he had a wound there. And also one to his
8 hand. You might recall you saw a picture of that when she
9 testified. And also his inner thigh right there. He also
10 had a puncture wound there.

11 So, again, what the autopsy pictures show you
12 that the cooperating witnesses and the evidence found at
13 the beach, what it tells you it is correct. That Baby
14 Blue was attacked by a number of different people using
15 different weapons. And his wounds have different sizes,
16 different depths.

17 What else did we show you? You heard a lot of
18 DNA evidence in this case. And you learned a lot about
19 DNA analysis.

20 Really, the bottom line is that the blood on
21 defendant Martinez' right work boot and on his jeans
22 matched the blood of Mario Quijada, Baby Blue, which was
23 taken from the autopsy.

24 And that is not surprising, right? He was
25 arrested at the scene of the crime, of a very bloody crime

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1 scene. So it is not shocking that he had the blood of the
2 victim on his clothing.

3 What did DNA expert Emily Head tell you about
4 the DNA profiles from the boot, the jeans, and Baby Blue's
5 blood, and it is here from the transcript. It is found
6 that this profile, meaning the DNA profile developed would
7 be expected to be seen in one, in greater than one
8 trillion people.

9 Question: Can you give the people a little
10 perspective of that?

11 Answer: The population of the world is about
12 6.8 billion. In order to get to a trillion people, you
13 would need about 137 world populations.

14 The bottom line was that that means that the DNA
15 on the two stains were the same as the DNA of Mario
16 Canton.

17 The defendant Boxer was interviewed by the NYPD
18 after he was arrested at the beach in Far Rockaway on
19 March 17th, 2010. And he gave a couple of statements to
20 the NYPD.

21 Let's look at the second statement to the NYPD
22 on March 17th.

23 Again, I'm just taking excerpts out of the
24 statement. The entire statement is in evidence, and you
25 can certainly ask to look at that.

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1 He states: I kicked him and he fell, referring
2 to Baby Blue. And that certainly would explain why blood
3 was found at the tip of his right work boot.

4 He then said: So then Baby Blue started to run,
5 and the person that I don't know gave me the machete and
6 he took out a knife. And then the person told me let's
7 kill this dog. So I got scared and hit him with the
8 machete. I don't know if I hit him in the face or in the
9 head. So then Baby Blue started to run.

10 Again, if we go back to the autopsy slide, I
11 show you the injury here that Dr. Coleman spoke about to
12 Baby Blue's head. And you have the statement of the
13 defendant admitting he hit Baby Blue in the head with the
14 machete.

15 Now, before the defendant Martinez gave this
16 statement to the NYPD, he had given an earlier statement.
17 In the first statement he tried to make himself out to be
18 the victim at the beach, and that he tried to convince the
19 detectives that he was actually trying to help Baby Blue
20 at the beach. But when challenged by the detectives with
21 other information, Martinez acknowledged that that first
22 version was not true.

23 Now, Boxer was not the only defendant who
24 admitted to his participation in the murder of Baby Blue.
25 Defendant Ortega did as well. And this is an excerpt from

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1 his interview by the FBI.

2 Over two years ago, one day Michichi picked me
3 up and we went to Queens. We met there with several of
4 our friends. Baby Blue didn't want to put work in. And
5 the decision was that he had to be done. We went to the
6 beach. Michichi stayed in the car and I, three others and
7 Baby Blue walked to the beach. One of the guys tried to
8 fire the gun but it didn't work. So then Payaso hit him
9 with the machete into shreds. A patrol car showed up and
10 I escaped, running with Payaso through the beach. My
11 friend picked me up and I went back home.

12 Again, ladies and gentlemen, it doesn't get much
13 clearer than that.

14 But in addition to all this evidence, we also
15 presented you with ballistic evidence and, again, this
16 shows you a combination of the ballistic evidence. It is
17 the three casings from the Argueta/Torres scene, placard
18 6, 9 and 23, the casing from the Moreno crime scene, the
19 gun recovered at the beach.

20 All of those items are here for your review also
21 during your deliberations.

22 We have the .22 Jennings recovered at the beach,
23 the three casings from the Argueta/Torres crime scene.
24 Then we have the casing recovered from the El Rancho Bar.

25 Charles Hopkins, the ballistics examiner from

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1 the Suffolk crime lab, told you, basically he was asked,
2 what is your opinion as to those, all the casings, the
3 test fired, the Argueta/Torres murders, the Moreno murder?

4 He answered: In my opinion they were all fired
5 from this gun, the .22 Jennings.

6 We know from his testimony he test-fired a
7 number of bullets out of this gun. We have the bullets in
8 evidence. And then when the bullets were fired, these
9 casings were ejected. And he examined the casings from
10 both scenes and determined they were both fired by the
11 same weapon.

12 Now, that is not all.

13 We also have a diagram showing you cell site
14 analysis. This one particularly is from March 16th, 2010,
15 between the hours of 9:00 p.m. and midnight. And the
16 phones at issue on this diagram are Boxer's found in
17 orange, the pink one is Payaso, and Marroquin's phone.

18 It shows you between 9:00 p.m. and midnight
19 their phones are bouncing off cell site towers in Far
20 Rockaway, close to their residences.

21 Marroquin's residence is noted by the red dot
22 there, and the defendant Martinez's residence is noted by
23 the red dot there. And you can see their phones are all
24 bouncing off cell site towers in the general area near
25 their residences.

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1 This next slide shows you between midnight and
2 3:00 a.m. that the phones at issue now are Boxer's phone,
3 Alvarado is Michichi, the driver, and Amaya, that is
4 Payaso.

5 It shows between 12:00 a.m. and 3:00 a.m., more
6 specifically between about 12:30 and 1:30 a.m., their
7 phones are bouncing off a cell site tower very south in
8 Far Rockaway near the beach area. That makes sense
9 because at that time they were down at the beach killing
10 Baby Blue.

11 Now, we also gave you charts showing you phone
12 contact. This one from March 17th, 2010 shows you contact
13 between a number of different individuals. And this is
14 basically contact between all the co-conspirators between
15 March 16th and March 17th, and you can see Boxer's phone
16 in contact with defendant Ortega's phone, and then Boxer's
17 phone in contact with Mario Canton, and that is Baby Blue,
18 and that is one contact on March 16th, the date he was
19 taken to the beach that night. Then you see a number of
20 contacts between Diego Marroquin's phone and Baby Blue's
21 phone, seven contacts on March 16th, consistent with the
22 fact that Marroquin was the one reaching out to Baby Blue
23 for the test run he was taken on and later when he was
24 lured to the beach.

25 You see Payaso down here with contacts with the

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1 defendant, and you see additional contacts between
2 Michichi and the defendant Ortega, and Michichi and Boxer.

3 Again, this slide corroborates the phone contact
4 during that time period, March 16th, 17th, and
5 corroborating these individuals were all in touch with
6 each other.

7 The government has established, ladies and
8 gentlemen, beyond a reasonable doubt that defendant
9 Heriberto Martinez and Carlos Ortega conspired to murder
10 Baby Blue, and aided and abetted in the murder of Baby
11 Blue.

12 We now turn to question number six. And that
13 is: Did the defendants commit those crimes at least in
14 part in order to maintain or increase their position in
15 the MS-13?

16 It is the final question you have to ask.

17 Was one of the defendant's purposes in joining
18 the conspiracy and helping to carry out the killings to
19 maintain or increase his position in the MS-13?

20 The evidence overwhelmingly is yes.

21 The best way to earn respect and status in the
22 MS-13 is to kill rival gang members or anyone who
23 disrespects the gang.

24 Carlos Martinez told you that he earned respect
25 after he helped to kill Nestor Moreno.

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1 Now, Boxer as a leader of the CLS Clique had to
2 insure that the CLS Clique and the MS-13 at large remained
3 respected and feared.

4 He also had to make sure that he was respected
5 and feared, not only by those outside of the MS-13 but by
6 his fellow MS-13 members and underlings.

7 As the leader of the MS, he could not let
8 Vanessa Argueta, Nestor Moreno or Baby Blue's conduct go
9 unpunished. That is what is expected of a member of the
10 MS-13 and certainly of a leader of the MS-13.

11 As to the defendant Silencio, you heard from
12 Jimmy Sosa that he and Silencio carried out the murder of
13 David Sandler because they were from El Salvador and
14 needed to prove themselves to the local MS-13. They had
15 to put in work and gain respect in the gang. And Silencio
16 was certainly proud of the work he did that day. He kept
17 this news article about the murder of David Sandler and
18 the shooting of Galan.

19 And Silencio was eager to participate in another
20 murder, when just one month later he urged the Sureños
21 Clique to kill Baby Blue after Baby Blue miserably failed
22 the test run.

23 All of the MS-13 members who agreed Baby Blue
24 should be killed and who participated in his murder,
25 including these defendants, Boxer and Silencio, did so to

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1 maintain and increase their position in the MS-13 and to
2 prove that they were not like Baby Blue.

3 But, rather, they were worthy of being called
4 MS-13. They were willing and ready and able and eager to
5 put in the work.

6 Based on the evidence, there should be no
7 question regarding each defendant's motive in these
8 murders. They did exactly what was expected of them as
9 members. And in Boxer's case, as a leader of the MS-13.

10 In the end, ladies and gentlemen, it is
11 important to remember why we are all here, the reason we
12 are all here. And we are all here today because human
13 lives were taken, were changed forever.

14 And why?

15 Vanessa Argueta, because she aligned herself
16 with the enemy, the 18th Street Gang, and in so doing she
17 disrespected the MS-13.

18 David Sandler, because the MS-13 believed that
19 he was a Latin King, a Chavala. And that made him
20 somebody who deserved to die.

21 Aaron Galan, because he happened to be with
22 David Sandler that night and in the eyes of the MS-13 he
23 was aligned with a Latin King and thus an enemy of the
24 MS-13.

25 Nestor Moreno, because he was doing his job,

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1 trying to collect a beer tab. And he had the audacity to
2 challenge the MS-13 and to disrespect Boxer and the MS-13.

3 And Baby Blue, because he did not want to kill
4 anybody. He did not want to hold the gun while they were
5 hunting for Chavalas. Because he had some sense of
6 appreciation for human life. But for that he was killed.
7 For that he was butchered to death. Because he was a
8 threat to what the MS-13 stands for.

9 And what do those two defendants stand for?
10 Violence, murder and pure evil.

11 We have proven each defendant's guilt beyond a
12 reasonable doubt. And that's why we now ask you to return
13 a verdict of guilty on all counts as to each individual
14 defendant.

15 Thank you.

16 THE COURT: May I speak to the lawyers at the
17 sidebar?

18
19 (Whereupon, at this time the following took
20 place at the sidebar.)

21 THE COURT: I will leave it up to you, do you
22 want to get started, or have a lunch break and come back
23 at 1:30? Or go for a half an hour?

24 MS. MACEDONIO: Can I have a few minutes to set
25 up and go for the half-hour?

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1 THE COURT: Once they send them back there, they
2 are gone.

3 MS. MACEDONIO: Yes.

4 Let's start, and then we can break.

5 THE COURT: All right.

6

7 (Whereupon, at this time the following takes
8 place in open court.)

9 THE COURT: Members of the jury, Ms. Macedonio
10 will go for about 20 to 25 minutes and then finish after
11 lunch.

12 When you get to a good breaking point, let me
13 know.

14 MS. MACEDONIO: Thank you, Judge.

15 Good afternoon, ladies and gentlemen.

16 I want to begin by thanking all of you for
17 paying such close attention to this trial and the most
18 painful and boring parts of it. We acknowledge there were
19 many of them. It is clear to all of us you were paying
20 close attention to all of that.

21 This has not been an easy case to be a part of.

22 At the end of the day, there were a number of
23 murders. Whether or not these homicides occurred has
24 never been a question in the case. The question is not
25 did they occur, but the question is why?

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1 This is a case about the applicability of the
2 RICO statute to the crimes that have been charged. It is
3 a complex statute and will be explained to you in great
4 detail during the Court's charge, and which will -- I will
5 rely upon a great deal during my closing arguments.

6 With regard to Mr. Martinez, there are two
7 questions you must answer.

8 First, has the government proven to each and
9 every one of you beyond a reasonable doubt that
10 Mr. Martinez participated in the homicide?

11 If you find that the government has not
12 established that burden, then you must acquit.

13 If, however, you find that they have met that
14 burden, your job is not over. You must then determine
15 whether the government has proven, again, to each and
16 every one of you beyond a reasonable doubt that
17 Mr. Martinez committed these crimes for the purpose of
18 maintaining and/or increasing his position in the MS-13.

19 The simple answer to these questions is no. The
20 government has failed to establish its burden of proof in
21 this case.

22 Even though it might seem contrary to you, to
23 your sense of fairness, to your sense of what is right and
24 wrong, since the government has failed to establish each
25 and every one of the elements of the charged crime, the

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1 only true verdict in this case is a verdict of not guilty.

2 Now, it took a very long time for us to select a
3 jury in this case. There were hundreds of questionnaires
4 that were filled out. And the parties questioned the
5 prospective jurors for really about a week. And that is
6 because this is a complicated statutory charge. And we
7 needed to select a jury that has the moral, intellectual
8 and emotional bearing to decide this case based upon the
9 law. And that is whether you agree with the law or not.

10 You took an oath to decide this case free from
11 prejudice against any person, or basing it upon sympathy
12 for any party.

13 We call upon you now to remember that oath and
14 to be true to it.

15 After all this time, as to what you sat through,
16 it would be easy forget that part of the process, to
17 forget about the oath you took.

18 And after sitting here week after week and
19 listening to graphic testimony and viewing photographs of
20 victims, and listening to medical examiners, some might
21 find it easy to look upon those two young Hispanic men and
22 somehow think of them as less deserving, less deserving of
23 the oath that you promised when you became jurors in this
24 case.

25 After all that testimony, some might find them

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1 as undeserving of your full and fair consideration. But
2 that is contrary to your role in this process. Your job
3 as jurors is about to begin. And we call upon you to live
4 up to the sworn oath that you took back in February.

5 Now, I want to address something right away.

6 Heriberto Martinez did not testify in this case.
7 And as you have been instructed by Judge Bianco, and I'm
8 sure he will do it again during the charge, that is a fact
9 that you may not consider in any way. You can't hold it
10 against Mr. Martinez nor can you draw a negative inference
11 from it. The reason for this is simple.

12 There is a presumption of innocence, not only in
13 this case but in every criminal case, and as Mr. Martinez
14 sits in that chair now, he is presumed to be innocent.
15 That is a presumption that remains with him unless, unless
16 12 of you find unanimously beyond a reasonable doubt that
17 he has committed the crimes he is charged with.

18 The presumption of innocence when coupled with a
19 burden of proof are the things that separate our system of
20 justice from other systems throughout the world. It is a
21 system that sometimes requires juries to do something that
22 feels difficult to do. It is a natural feeling in a
23 murder case, particularly when there are multiple
24 homicides, for jurors to feel like justice demands that
25 somebody be held accountable. But that is precisely the

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1 kind of emotional response that you have to avoid. That
2 is precisely the kind of emotional response that you are
3 sworn to avoid.

4 Now, in my summation I'm going to focus
5 essentially on the homicides. There are other counts
6 within the indictment, but we have a limited period of
7 time, and I'm sure you don't want to listen to me to the
8 end of the day so I will focus on the homicide here.

9 I will review with you the testimony that you
10 heard.

11 (CONTINUED ON THE NEXT PAGE.)
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Summations - Macedonio

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1 (Continued from the previous page.)

2 MS. MACEDONIO: You may recall that the defense
3 often had little or no cross-examination of the
4 crime-scene witnesses. Again, that is because there is no
5 question that the homicides took place. No one has ever
6 challenged that.

7 The question that you have to decide is, has the
8 Government proven to you, with credible evidence beyond a
9 reasonable doubt, that Martinez participated in those
10 homicides. And you have to decide if he did that, did he
11 maintain or increase his position with the MS-13.

12 I'll divide the evidence in categories. First
13 we'll talk about the statements allegedly made by the
14 cooperators, and briefly we'll go through phone records,
15 DNA evidence, and firearms evidence.

16 Let's start with the cooperators. Who are the
17 Government cooperators, and what benefits did they
18 receive?

19 Well, first, with regard to all the cooperators,
20 we must remember that if these prosecutors sitting at this
21 very table -- they really hold the key to the rest of
22 their lives. A lot of the cooperators who testified pled
23 guilty to life counts, and if these prosecutors don't
24 write what is called a 5K letter to the judge who is
25 sentencing them, the judge will may give them a mandatory

Summations - Macedonio

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1 life sentence. This is something that you shouldn't
2 ignore. The cooperators have spent hours and hours and
3 hours with the prosecutors and agents who are here
4 throughout the trial, and they hold the key to their
5 future. No question.

6 The first cooperator that we had was Tony
7 Guevara. His nickname was Fantasma, or "the Phantom." He
8 knew nothing about this case. He never before testified,
9 and from the Government he had already received enormous
10 benefits.

11 He had done nothing but talk to them. That's
12 all he had done. He was like the poster child for what
13 you get with the federal government. He goes in and he
14 just talks to them. He admits to all sorts of crimes.

15 Tony Guevara rode around for years looking for
16 people to kill simply because of the color of their skin.
17 Shots were fired during those incidents, but Guevara
18 wasn't required to plead guilty to any of that.

19 He had exposure to multiple consecutive
20 sentences after committing dozens and dozens of crimes.
21 He pled guilty to one. One crime.

22 And after spending a few years in jail, even
23 though he is facing a life sentence, he goes into court,
24 and with the consent of the Government, he gets bail. He
25 gets bail, having done nothing but talk to them.

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1 And he doesn't have to post money. Family has
2 to post bond. There is not even any reporting conditions.
3 Doesn't even have to come into the building and check in.
4 Hey, Tony, how are you doing? Nothing.

5 He has been in jail for three and a half years,
6 and rather than face mandatory deportation for the crimes,
7 they promise to give him work and promise to keep him in
8 the country. Isn't that wonderful. Isn't that
9 reassuring. Such a valuable individual we need in the
10 country.

11 He claims that the FBI is keeping him in the
12 country because if he's deported to El Salvador, he will
13 shortly be killed. But he's here freely and openly in
14 this country, using a work permit that the FBI got for
15 him. That's the way the cooperation works.

16 When all of that was brought out in
17 cross-examination, Mr. Tierney got up on redirect and
18 tried to elicit from Mr. Guevara that indeed he was still
19 facing a life sentence. And it was clear from the
20 expression on your faces that all of you knew that Tony
21 Guevara wasn't going back to jail.

22 So let's summarize. Tony Guevara, what did he
23 get? Well, the Phantom was convicted on one weapon count
24 after committing all of those crimes. He was facing life
25 in prison. He got a pass on years of hunting people and

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1 four attempted murders. The Government agreed to his
2 release after a few short years in jail, facing
3 deportation when he is sentenced. But that sentence date
4 has never, ever, ever been scheduled.

5 Rather, the FBI got him -- permission to get him
6 to work legally and promised to keep him in the country.
7 Promised no money for bail, and has no bail with respect
8 to the conditions. That's the way the Government wanted
9 to open with their case. Wanted to let you know what
10 cooperation is all about.

11 The next cooperator we had was Jimmy Sosa. Sosa
12 was also known as "Junior." Much like Guevara, he knew
13 very little about Mr. Martinez.

14 Before I move off of Mr. Guevara, you must
15 remember he also had no information about the murder of
16 Vanessa Torres, Nestor Moreno, or the murder of Baby Blue.
17 Sosa, like Guevara, knew very little about Martinez and
18 certainly didn't have any information regarding any of
19 those murders.

20 Sosa testified that he met Martinez on one
21 occasion and spoke to him over the telephone. Like
22 Guevara, Sosa is facing life in prison, but we really know
23 what that means, don't we.

24 He did give us some rather interesting
25 information. He made it clear that he would say anything

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1 during his plea allocution to get his cooperation, even if
2 he didn't agree with it. He acknowledged that he's
3 capable of lying if it were in his interest and that he
4 could tell convincing lies.

5 For example, he lied to the FBI about Demente
6 and also lied to them about his own participation in
7 MS-13, and he lied to David Sandler. He lied to David
8 Sandler and convinced him to come out so he could kill
9 him. That's a pretty serious lie. That's a pretty
10 accomplished liar.

11 He involved Demente in crimes that he didn't
12 even commit, so when he goes in to talk to the FBI, he's
13 telling the FBI his fellow gang member had did things that
14 he did not do. That's what you will hear over and over
15 again: gang members throwing other gang members under the
16 bus for things that he didn't even do.

17 And then, strikingly, he stated during his
18 guilty plea before Judge Bianco that when he participated
19 in the Sandler homicide, he got more respect. But when he
20 was on the stand here in front of you, he denied that.
21 No, no, that didn't happen.

22 Both of those statements were made in this very
23 courtroom. They can't both be true. So he was either
24 lying to the Judge when he allocuted or he was lying to
25 you when he testified. Either way, he's a liar.

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1 What did he say when he was questioned about
2 this, all of this, and his inconsistent statement to the
3 FBI? Here's his explanation. "But I had just been
4 brought into federal custody, so I was getting things back
5 into my memory at this point. I wasn't totally sure about
6 the people."

7 What does that mean? He's just at the FBI
8 talking about people, you know, pointing the finger at
9 people and doesn't know what he's talking about? Very
10 simple. He was trying to get his story straight, plain
11 and simple.

12 Sosa testified that members of MS-13 often
13 committed crimes that had nothing to do with the gang. He
14 acknowledged that every crime that was committed, even if
15 you were with gang members, didn't necessarily mean you
16 were committing it to maintain or increase your position
17 with MS-13. Those are very important themes throughout
18 this, because those are legal requirements.

19 So it's not necessarily true that just because
20 you are a gang member, that everything you do means you
21 are doing it for the gang somehow.

22 Finally, Sosa gave us some very interesting
23 testimony about sworn statements. He testified that he
24 gave a statement in Suffolk County that wasn't explained
25 to him and he didn't understand it. The Government

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1 adopted that theory, and during redirect got up and had
2 Mr. Sosa explain, well, what happened?

3 And he said, well, I didn't really speak
4 English, and they had me sign this statement. It wasn't
5 really right. The detectives took it down, and it was all
6 wrong.

7 A lot of statements had been made, a lot of
8 them. So remember that. Remember that it's okay for the
9 Government, when it is their witness, to assert to you
10 that some detective someplace took a statement, had a
11 person sign to it, swear to it, and then it just wasn't
12 true because it fits their theory of the case. It meant
13 that that person was now telling the truth.

14 So what does Jimmy Sosa get. Jimmy Sosa is
15 convicted of the homicide and attempted murder of Aaron
16 Galan. With the issue of the 5K letter by the Government,
17 by these very prosecutors, the Judge will have the
18 discretion to sentence him to time served, even though
19 he's facing a mandatory life sentence.

20 He lied repeatedly to the agents without any
21 consequence whatsoever. And despite the fact he's here
22 illegally -- he's here illegally, and he's deportable
23 because of not only his conviction in this case but
24 because of his conviction in state court -- the Government
25 is going to recommend that he get an S visa so he be

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1 permitted to stay in this country. And they are also
2 going to recommend that he be allowed to participate in
3 the witness security program.

4 Those two first cooperators, they gave us no
5 information at all with regard to the homicides at issue.

6 Then the Government called Carla Santos. Carla
7 Santos was a significant cooperator for the Government.
8 You remember her. She was here for days. Her nickname
9 was La Mania, "the maniac," a name that she fully
10 embraced.

11 The Government spent \$100,000 on Carla and
12 promised her that she would not be prosecuted for all
13 sorts of crimes, including attempted murder. So how does
14 Carlos Santos really ring the bell here? She spent years
15 committing crimes.

16 Not only does she not have to plead guilty to
17 the crimes, they put her in a hotel for month and months
18 and months on end.

19 Remember how she started her cross-examination:
20 A mother would do anything for her child. That was her
21 attitude when I started to question her. A mother would
22 do anything for her child. That was a way of justifying
23 anything she had ever done.

24 Let's think about what she did for her child.

25 From the moment that little girl was born, she

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1 took her on all sorts of criminal ventures, drive-by
2 shootings. She stored weapons in the very car where that
3 baby had her baby seat. Stored weapons in the home that
4 that child shared with her grandmother, and stored those
5 weapons knowing they would be used in drive-by shootings.

6 Carla claims when she got a phone call, and she
7 had to help Cruzito, Zorro and Gringo; that she was
8 scared; she didn't know what was going on.

9 So what did she do? She didn't call the police.
10 She put her baby in the car, as if the baby was somehow
11 going to protect her, and took the baby there. When she
12 found out -- when these three men told her that they had
13 just participated in a double homicide, she testifies that
14 for days she drives around with them, with that baby in
15 the car. A mother would do anything for her child.

16 In fact, she even gave her daughter a nickname,
17 Maniatico, "the little maniac." Sure, she was mother of
18 the year.

19 Let's talk about the lies that Carla
20 acknowledged that she had told law enforcement over the
21 years before she decided to cooperate.

22 First, Carla Santos lied repeatedly to the FBI
23 when she first met with them. She said she wanted to get
24 off the streets and have a better life for her daughter.
25 So when the FBI comes to question her, first she denies

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1 everything. And finally they call her in, and she's there
2 for hours and hours and hours. She doesn't say, you know,
3 suddenly the bell went off, or suddenly I had an epiphany.
4 She cracked. She couldn't take it anymore. It wasn't
5 because she wanted to do this -- she cracked. I'm sure it
6 was the early morning hours, and she just cracked.

7 That's not somebody who wants to cooperate,
8 somebody who turns over a new leaf. That is something
9 very, very different. Just one example how she lied to
10 law enforcement.

11 She had a boyfriend named Sparky. She let
12 Sparky borrow her car, knowing that it would be used in a
13 drive-by shooting. What happened then, unfortunately,
14 Sparky, he got caught doing that. And so where the police
15 found the car and came back to Carla, they came to her and
16 said, hey, what's going on with the car? There was a
17 drive-by shooting.

18 You know what she said? Oh, it must have been
19 stolen. Immediately throws Sparky under the bus.
20 Immediately lied to the police.

21 There was another incident where you may
22 remember -- this was rather graphic. She testified that
23 two people she knew came to her house in the middle of the
24 night, and they were covered in blood, having just
25 participated in a homicide. One of them actually ended up

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1 going to the hospital and somehow or another communicated
2 with the police he had been at her house. Of course, the
3 police come to question her, and she lies about that, too.
4 She says there were a bunch of slobbs at the beach, meaning
5 Bloods. Just slobbs at the beach. It was my understanding
6 they attacked them first.

7 Carla Santos was and continues to be an
8 extremely manipulative woman. Think about what she was
9 doing in the drive-by shooting. At certain times Carla
10 Santos would be present in the neighborhood, but she
11 wouldn't be driving the getaway car. They gave her a gun.
12 Carla, we found somebody. Can you come with the gun, they
13 would say. Other times, she was the actual getaway
14 driver, and on many of those occasions she had the baby in
15 the car.

16 She testified that she was so helpful on these
17 occasions because no one would suspect a woman. She
18 thought that through. She thought it through. No one
19 would suspect me. I'll be able to get away with it.

20 And to put the cherry on top of the cake, if I
21 had my baby in the car. That's a manipulative, dangerous
22 individual.

23 There was a lot of testimony about when Carla
24 worked at a place called Things Remembered. I'll not go
25 into a great amount of detail. She worked there a great

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1 amount of time, and she was a trusted employees. They
2 trusted her so much, they let her close the store, in
3 charge of making deposits. Had done the receipts at the
4 end of the day.

5 And she committed so many frauds against them
6 that -- one of them was when she had her friend come, and
7 they faked this whole robbery.

8 So she first had to go to the security in the
9 mall and tell them about it. And the patrol officer came
10 down, and she lied about it. Came down and then told the
11 detective the whole crazy story what she did. All of that
12 for \$400.

13 Can you imagine the lies that Carla Santos would
14 tell people for \$100,000? It's not hard to imagine, is
15 it?

16 What was her rationale when I pressed her why
17 she did it? She would simply say, I needed something. I
18 needed to buy something for my child. My baby needed
19 this, so I lied and I committed a crime, as if that made
20 it all okay.

21 Think about the timing of her cooperation. She
22 said she was really upset about the arrest of Torres'
23 homicide, and after that she made this decision she was
24 going to cooperate.

25 But after those homicides, she continued to do

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1 drive-by shootings. She got herself tattooed and
2 participated in a universal.

3 Does that sound like somebody who wanted to get
4 out of all this?

5 She only wanted to get out of the gang after she
6 spent years and years and years perfecting her ability to
7 lie to law enforcement and when she was finally threatened
8 with jail. And what was she able to do? Not only did she
9 manage to keep herself out of jail, she managed to never
10 get herself charged with a crime. That's talent. That's
11 real talent.

12 Let's take a look at some of the crimes she got
13 a pass on. Crimes where people at the table had promised
14 her she'll never be prosecuted for:

15 Racketeering; racketeering conspiracy; murder;
16 murder conspiracy; numerous counts of attempted murder;
17 participating in multiple drive-by shootings; lending her
18 car to MS-13 members with knowledge it would be used in
19 drive-by shooting; selling cocaine; selling marijuana;
20 storing weapons for gang members in her home and in her
21 car; numerous occasions of being an accessory after the
22 fact in murders; obstruction of justice on both the state
23 and federal level; dealing in counterfeit money and
24 endangering the welfare of a child.

25 For that, \$100,000 was spent on her. She was

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1 placed in witness security. A new home was found for her,
2 and she got a new car. To this day, she receives a
3 tax-free monthly check of \$1,435.

4 What is most interesting about that is that when
5 Carla Santos was held up in a hotel that the taxpayers
6 were paying for, she was also taking her baby to the
7 Queens jail where she was visiting a gang member. This is
8 after she is cooperating. So they have her in a hotel,
9 they are paying for her food, they are paying for her
10 expenses because she is in so much danger, and going to
11 the Queens jail and visiting a gang member with her
12 daughter.

13 And she openly acknowledged to you there was a
14 significant possibility that each and every time that she
15 did that, that she was either going to run into other gang
16 members at that jail or family members visiting gang
17 members that were incarcerated. What a scam.

18 What did Carla Santos add to the Government's
19 case? Not really much.

20 With regard to the Argueta and Torres homicide,
21 here's her testimony when it comes to Mr. Martinez.

22 She testified that she heard, quote, parts,
23 unquote, of a conversation. When asked directly: What
24 did Boxer say? What did Mr. Martinez say? She said: He
25 just told them to fix it. Do what you have to do.

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1 There was not a single follow-up question on
2 that, not one. Not one of these prosecutors said to her,
3 Ms. Santos, what did you understand that to mean? You've
4 been a part of MS-13 for so long, what did it mean when
5 Mr. Martinez said, fix it, do what you have to do? No
6 follow-up whatsoever.

7 And then there's a question as to why? We'll
8 keep coming back to this. Why? It's not that the Argueta
9 and Torres homicides didn't happen. But why?

10 On cross-examination, Carla Santos testified
11 that she overheard Cruzito speaking to the girlfriend,
12 Jennifer. And he did it for her, not MS-13. He did it
13 for her.

14 Here's a question and answer period from
15 Ms. Santos.

16 Question: Was it your understanding that
17 Cruzito had done it for Jennifer because Vanessa had sent
18 people to Cruzito's house on two occasions to beat him up?

19 Answer: Yes.

20 Question: And did you tell the agents in this
21 case that Zorro made the plan for Cruzito to kill Vanessa?

22 Answer: Yes.

23 Question: And did either Zorro or Gringo tell
24 you that they participated in those homicides for Cruzito?

25 Answer: Yes.

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1 Now, none of that, none of that testimony from
2 Ms. Santos, gives you any indication those homicides had
3 anything to do with increasing or maintaining
4 Mr. Martinez's position within the MS-13. That's a
5 crucial element. The Judge will instruct you on that.

6 And Ms. Capwell showed you some charts this
7 morning with telephone numbers on them. She indicated
8 that she wasn't permitted earlier to have the names on
9 them. That's because that's their theory of the case, and
10 that was the Judge's ruling; not because anyone wanted to
11 withhold anything.

12 What is interesting is that the phone charts,
13 where the phone calls are going back to everybody, and
14 Carla Santos is driving everybody around and harboring
15 people, never heard from her. Why aren't they on those
16 charts? They had the phone numbers. Where are all of
17 their phone numbers to these folks?

18 THE COURT: Ms. Macedonio, do you want to break
19 now?

20 MS. MACEDONIO: Sure.

21 THE COURT: Ladies and gentlemen, we'll recess
22 until 2 o'clock. Don't discuss the case.

23 (Recess taken.)
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25

Summations - Macedonio

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A F T E R N O O N S E S S I O N

THE COURT: Please be seated.

Seat the jury.

(Continued by Ms. Macedonio.)

MS. MACEDONIO: Good afternoon, your Honor.

So when we broke for lunch, I had just sort of concluded my comments with regard to Carla Santos and the Argueta-Torres homicides. And she is the only witness that indicated that Mr. Martinez had any knowledge about the homicides before they occurred, and essentially she says nothing about them.

And then with regard to why they occurred, there's a whole number of reasons that she comes up with, none of which is for Mr. Martinez to maintain her increasing position within MS-13.

So I'm going to turn now to what Ms. Santos said about the Nestor Moreno homicide, "the boxer." She's testifying about all of this stuff from other people. Not present at the scene, so she has very limited information.

What she says about the Nestor Moreno homicide, Boxer was pissed off because he was pepper-sprayed in the face. Well, clearly, this provides an alternative motive having nothing to do with MS-13. Of course, you have to credit her testimony to begin with. But assuming that for

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3203

1 some reason you decide to do that, that's what she gives
2 you, and that's it, a purely personal motive.

3 With regard to the Baby Blue-Arguetta homicide,
4 Carla testifies that after the homicide occurred, she went
5 to a universal. And the reason for the universal was to
6 figure out who was going to get green-lighted for Baby
7 Blue's murder. So, clearly, the Baby Blue homicide wasn't
8 sanctioned.

9 Now, if you want to increase or maintain your
10 position within MS-13, you are not going to do something
11 to get yourself green-lighted. You will not just do that.
12 It makes absolutely no sense.

13 Here's what she said:

14 Now, the universal you attended, you testified
15 part of the issue or the agenda there was to see who was
16 going to get green-lighted because of Baby Blue's murder,
17 right?

18 Answer: Yes.

19 Question: That's because Baby Blue's murder
20 wasn't sanctioned; is that correct?

21 Answer: Yes.

22 And that's what Carla Santos gives us. She's
23 not present with any of them. She just gives you what she
24 heard along the way. And with each one of them, with each
25 one of those incidents, she provides alternative

Summations - Macedonio

3204

1 reasonings, or the "why" that I keep referring to.

2 I don't want you to sort of disregard that
3 because, again, as the Judge will instruct you, it's an
4 element of the offense that each and every one of you must
5 find beyond a reasonable doubt.

6 The next witness that you heard from, next
7 cooperating witness that you heard from, I should say, was
8 Joel Calderon, also known as "Gasparin." Gasparin lied to
9 the Government lawyers and agents for months, months on
10 end. He convinced them he was not a member and only an
11 associate.

12 When he was questioned on cross-examination
13 about that -- he was questioned repeatedly, and he was
14 saying, it was my duty. It was my duty to say that.

15 What does that mean?

16 He's meeting with the agents. He's meeting with
17 the lawyers for the Government. He's supposed to be
18 cooperating, and he's saying it was his duty to lie to
19 them. He lied so much to them that when he had his
20 cooperation agreement drafted, he even had them insert "or
21 associate."

22 So where it normally reads he's going to plead
23 guilty to being a member of MS-13, he has an insert for
24 "associate." He's insisting all along, I'm not a member.

25 There's a reason for that, right? They want to

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3205

1 tell them what they think they need to hear to be able to
2 get their 5K letter. On the other hand, they don't want
3 to admit everything. And so when they are coming in front
4 of the judge who will sentence them, they want to sort of
5 back off a little bit, even if, in the end, it doesn't
6 make sense. They just can't acknowledge their own
7 participation.

8 So Gasparin spends months and months and months
9 saying, I'm not a member. I'm just an associate. And
10 they alter his agreement to reflect that because they
11 believe him.

12 So he signs the cooperation agreement, comes
13 here to plead guilty, and the first things he tells Judge
14 Bianco: I was associated with MS-13. I wasn't a member.
15 First thing, right out of the box, lies to the Judge.

16 He violated his cooperation agreement again and
17 again and again. He's smoking marijuana in prison, lying
18 to the agents, and there is absolutely no reason for you
19 to believe that he was under any threat of having the
20 cooperation agreement violated.

21 These folks are lying to them, and they are just
22 accepting them. They are accepting it because they have a
23 story. They have a theme, and they are running with it no
24 matter what the fault. Doesn't matter if they've given a
25 woman 100,000 on a pattern of all sorts of crimes. They

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3206

1 are going with a theory no matter what.

2 Gasparin was captured, if you remember, by ICE
3 in Texas. After he spent a few months in jail, he was
4 released. He promised that judge he would come back to
5 court. He had no intention of coming back. He wasn't
6 here legally.

7 In that case when he lied to that judge, he had
8 the same exact incentive to lie to this judge and to lie
9 to you. Because if he doesn't, then he will get deported.
10 It's the same thing over and over and over again.

11 Let's talk a little bit about what Gasparin says
12 about the homicide in this case.

13 With regard to Argueta-Torres murders, Gasparin
14 says he and other people picked up Gringo, Zorro and
15 Cruzito and that they took them to an abandoned apartment
16 where they stayed, and that they then again picked them up
17 later the next day.

18 Ms. Capwell completely ignores that during her
19 summation. Instead, she went with Carla. Carla picked
20 them up, took them to the hotel, took them to the Bronx.
21 Carla, Carla, Carla. You have a story, you have to run
22 with it. She has a hotel receipt.

23 Well, there are other cooperators saying they
24 stayed in an abandoned apartment. Why would they stay in
25 a hotel? Make any sense to you?

Summations - Macedonio

3207

1 He also contradicted Carla when she talked about
2 her pending membership, her presence at universal. He
3 specifically testified: Females can't be members.
4 Females can't be members of MS-13, and nonmembers are not
5 allowed at clique meetings or universals.

6 It's just another layer of the inconsistency of
7 the testimony. Make no doubt about it, you can't convict
8 either one of these two men of anything unless you believe
9 the cooperators. But the cooperators consistently are
10 inconsistent with what they say about the crime scene.

11 With regard to the Moreno murder, the reason he
12 gives for Mr. Martinez not going into the bar with him and
13 Demente and Carlito, he says that the reason for that is
14 because Mr. Martinez says that he can't go into the bar
15 because he will be recognized.

16 Well, if you remember the testimony, it is
17 Gasparin that would have been more likely to be
18 recognized, because at least in some of the testimony --
19 and there's some conflicting testimony with regard to it,
20 but the testimony is that Princessa was going to pay for
21 the beer. They realized Princessa left the bar. They
22 were gone.

23 Gasparin is outside. Gasparin, who Moreno grabs
24 and throws on the ground. It's Gasparin who is having all
25 the problems with the bouncer it is Martinez who comes to

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3208

1 his rescue, if you believe all this testimony.

2 So it doesn't make any sense that the reason why
3 Mr. Martinez stays in the car and Gasparin goes, it's the
4 only one he recognizes. That doesn't make any sense at
5 all. Gasparin had at least as much of a motive to want to
6 kill Moreno.

7 And then there's another contradiction.
8 Gasparin, the waitress who testified and the bartender who
9 testified in this case all contradict Carla once again.
10 Carla says that she learned that everybody was thrown out
11 of the bar because they were gang members and therefore
12 not welcome in the bar. For everybody else, there was a
13 problem with Princessa.

14 So, again, you've seen the pictures. Clearly
15 killed. The question is, why and by whom?

16 Can you trust the evidence that the Government
17 gives to you?

18 Now, with regard to the Baby Blue murder, he
19 lies about that again. It's not really a surprise. First
20 he gave inconsistent statements about his presence at a
21 meeting that took place before Baby Blue. He says during
22 his profferers that he was required to leave that meeting.
23 And this was all part of the: I'm not a member of the
24 MS-13. I couldn't stay. They discussed it. I didn't
25 know anything about it.

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3209

1 Then he says in cross, everyone was in the
2 apartment at 9 o'clock, and they didn't go out until
3 allegedly when he testified.

4 If they all went to the apartment at 9 o'clock,
5 why isn't there a video of everybody going in? We didn't
6 see that. We didn't see the individual pictures of people
7 going in. If there is this test-drive of Baby Blue, where
8 is the video of that? Where is the video of the folks
9 coming out of the apartment?

10 Apparently, if you believe this, they are
11 upstairs having this meeting. People say he has one more
12 chance, one more chance and that's it, and then they go
13 down.

14 In fact, Baby Blue is supposed to be there.
15 He's at the meeting, supposedly. They say he's hiding out
16 in the bathroom, making phone calls in the bathroom.
17 Wouldn't that be great evidence for the Government, seeing
18 him coming down? We have folks coming back, allegedly,
19 from the train station and folks later leaving, but no
20 Baby Blue.

21 Gasparin told the assistants in this case during
22 the proffers that Payaso told him, that Payaso told him
23 that Demente went to the beach and that Demente stabbed
24 Baby Blue. And Demente told him, die, die, as he stabbed
25 Baby Blue.

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3210

1 But Gasparin testified that Demente couldn't
2 have done that because Demente didn't go to the beach.

3 So which one is it?

4 You know, this is a difficult situation, that
5 there are so many inconsistencies. And I don't want to
6 sound like I'm droning on and on -- and it is hot in this
7 room today. It's almost unbearable -- but I have an
8 obligation to bring all this stuff out to make sure you
9 understand what the inconsistencies are, as tedious as it
10 is.

11 So those are the inconsistencies in Gasparin's
12 testimony as compared with Carla, and what he tells the
13 agents and what he tells Judge Bianco. He clearly has no
14 problem implicating Demente in a murder that he knows he
15 didn't commit.

16 Why do you think he has any problem of
17 implicating these defendants of the same thing?

18 What did Joel Calderon, or Gasparin, get?

19 He has been convicted of the Nestor Moreno
20 homicide. With the issuance of a 5K letter by the
21 Government, the Judge will have the discretion to sentence
22 him to time served, even though he's now facing a
23 mandatory life sentence. He lied repeatedly to the agents
24 without consequence. So this whole nonsense about "I have
25 to tell the truth" is just that: nonsense.

Summations - Macedonio

3211

1 He's not been prosecuted for numerous assaults
2 and numerous gang related crimes of violence committed in
3 custody. Despite the fact he's here illegally and has an
4 outstanding order of deportation, the Government is
5 recommending that he will stay in this country and also
6 will recommend that he be able to participate in the
7 witness security.

8 That brings us to Carlos Martinez.

9 Martinez told you that in preparation for his
10 testimony here, that he met with the Government on
11 numerous occasions for several hours. He was told he had
12 an obligation to tell the truth, and he was not to commit
13 any new crimes.

14 Well, after he signed his cooperation agreement,
15 Mr. Martinez went back to the jail, smoked marijuana every
16 day. Stored it in his locker. Distributed it. Had the
17 guards bringing it in, and he claims he never got caught.

18 Imagine this? He's in a prison, never got
19 caught because he smoked it in a closet.

20 You're all grownups. You can imagine. It's a
21 closed facility. A, how did he have access to a closet,
22 and B, the smell of marijuana is something you cannot see,
23 particularly in a closed environment. I have no doubt
24 that he's smoking marijuana in the prison, but he figured
25 out a way to manipulate the system, figured out a way

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3212

1 around out.

2 He had possession of tattoo equipment and MP3
3 players, and he said somebody was setting him up. Before
4 he went to jail, he says he didn't have a tattoo because
5 he wasn't old enough to get one. Doesn't mean that he
6 didn't go to any R-rated movies, either, but certainly
7 went around Queens trying to kill people.

8 He's constantly having fights in jail,
9 constantly assaulting people, and this he claims because
10 people are disrespecting him. He has absolutely no fear
11 of losing his cooperation agreement despite the fact that
12 you've been told that he faces a mandatory life sentence.

13 You learned a little bit about Carlos Martinez's
14 background. He's essentially just a punk. He came here
15 after a life of crime in El Salvador.

16 The highlights of those crimes were he hunted
17 down his own grandfather, and the final act was he was
18 upset with someone, so a group of people went to this
19 individual and banged him repeatedly over the head with a
20 bat and left him for dead.

21 Now I have to leave El Salvador because my life
22 is in danger, and MS-13 will kill me.

23 He's fortunate enough to be able to come to this
24 country illegally. Their family gets him in. He availed
25 himself of everything this country had to offer. Goes to

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3213

1 school for free, and what does he do? Joins MS-13 as
2 quickly as he can.

3 He was a good member. He rose quickly. Became
4 the treasurer. Going to universals. All of this after he
5 was out on bail in a drug case in Queens County.

6 What did he say about that drug case? Well, he
7 really tried to back away from that, so let's tell him as
8 much as he needs to know, or we'll deny him what they
9 don't need to know.

10 He testified that in December, at 7 o'clock in
11 the morning, when the agents knocked the door down looking
12 for somebody else, 40 glassines of cocaine flew out the
13 window. Happened to be on the ledge, and they flew out.

14 Really? That's what he told you.

15 And of course the machete and bat went out too.

16 Then he went to the 101 Precinct, and he just
17 lied to everybody there what is going on.

18 They let him out on bail, and he continues to
19 commit crimes. Continues to lie, lying to everybody. And
20 then he gets arrested in this case, and he lies to them at
21 first, too.

22 So what does he add? With respect to the
23 Argueta and Torres homicides, he adds nothing. He tells
24 you they had been killed because some guys that showed up
25 at Cruzito's house went to kill him. He has nothing to do

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3214

1 with it. Certainly doesn't state that it was done to
2 increase or maintain anyone's position in MS-13.

3 With regard to the Nestor Moreno homicide,
4 again, it is the "why" question. Why? Why was Nestor
5 Moreno killed? Why?

6 He talks about the fight with Princessa, that
7 she had left. He doesn't agree with Carla's version of
8 the events that he was kicked out for being gangsters.

9 No, the testimony in this case has been that
10 Boxer sits in the car, and he insists that it gets done.
11 But there was never any testimony in this case that
12 Mr. Martinez wasn't a hands-on person. I mean, if this
13 was his vendetta, if this is what he wanted done, if he
14 wanted to be pepper-sprayed in the face, why didn't he get
15 out of the car?

16 They didn't want to be recognized. Really?

17 When you think about it, Gasparin had an equal
18 if not stronger motive than Mr. Martinez. And when you
19 are listening to the Judge's instruction -- and they are
20 very lengthy. It will be hard to focus on them. I'm
21 asking you with regard to this particular homicide to pay
22 particular attention to the multiple conspiracy count.

23 With regard to the Baby Blue homicide, again,
24 you heard a great deal about the videotape. He, too, lied
25 to the agents, repeatedly, whether or not he was a member

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3215

1 of La Mara and whether he was in the room when he
2 discussed this. In fact, he signed a sworn statement
3 saying that he wasn't.

4 Then he also testified about something very
5 interesting. He testified that after things had gone bad
6 on the beach, that he called Smoky. And he's trying to
7 explain to Smoky what happened, because it is his
8 understanding that Smoky authorized all of this.

9 And Smoky tells him, I don't know what you are
10 talking about. What are you talking about? And he hangs
11 up the phone on him.

12 So it is clear from that testimony, again, if
13 you are to credit it -- and all of this is interlayered
14 with inconsistency, so you have to sort whether you will
15 credit some of it, none of it, all of it. That's your
16 job. My job is to point out the inconsistencies.

17 From what Martinez testifies about, Carlita
18 testifies about Smoky's understanding clearly indicates it
19 wasn't sanctioned, there was another purpose or theory
20 here, and therefore it wasn't in furtherance of
21 maintaining or increasing anyone's position in the MS-13.

22 Finally, Carla says that he went to the beach
23 with his mother and saw the detectives carrying a yellow
24 envelope, and you can see the handle of the machete
25 sticking out the top of the envelope. That is contrary to

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3216

1 what the detective told you.

2 The detective tells you that he sees that
3 machete, sees it in the water, marks it, photographs it.
4 The only detective in this whole case who is able to take
5 a picture or make a recording was him. And he gets it,
6 puts it in the field envelope and covers it.

7 This is kind of an example when you go a little
8 too far. Martinez went a little too far. Yes, he saw the
9 machete sticking out of the envelope. That will get him.
10 Never anticipates that a detective would say something
11 contrary to that.

12 So what does Carlos Martinez, or Carlito, get as
13 far as his benefits in the case? He's convicted of the
14 murder of Nestor Moreno and conspiracy to murder Quijada.
15 He will get time served, perhaps, even though he's serving
16 a mandatory life sentence. Smoked Martinez while in
17 custody. Committed numerous, various crimes. And
18 cooperation in this agreement was never even called into
19 question, never mind voided.

20 He lied repeatedly to the agents without
21 consequence. He was not prosecuted for numerous assaults
22 and gang-related violence. Not prosecuted for multiple
23 murder conspiracy. Not prosecuted for crimes while he was
24 in custody. Not prosecuted for obstruction of justice.
25 His drug case in Queens County seems to have been

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1 suspended due to his federal cooperation. And once again
2 the Government is recommending that he get an S visa to
3 stay in this country and be able to participate in the
4 witness security program.

5 Those are the only three cooperators, Carla
6 Santos, Gasparin and Carlitos, who offered you any
7 information about the homicide case. Each one is an
8 accomplished liar. Each one of them handles the most
9 powerful thing on the line: to lie to you all. And each
10 one of those people you must rely upon in order to convict
11 Mr. Martinez.

12 Now, Judge Bianco will instruct you about what
13 reasonable doubt is, and I suspect he will say something
14 along the lines of this. Reasonable doubt causes a person
15 to hesitate to act in a matter of importance in his or her
16 personal life.

17 In this case, in order to convict Mr. Martinez,
18 you have to rely upon the testimony of cooperators who
19 have every incentive to lie to you. So ask yourself this
20 question: Knowing what you know about these people, if
21 they knocked on your door and asked you to rely on them,
22 would you trust them or would you hesitate?

23 I suggest that not only would you hesitate, you
24 would shut the door in their face. And it wouldn't have
25 to be a matter of importance to you.

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3218

1 I'm going to move now into the testimony of some
2 other folks. And we'll talk about the night of the
3 arrest, the night on the beach, which would be the 17th of
4 March of 2010.

5 The first officer arriving at the scene was that
6 very tall gentleman, Police Officer Salkey. And he
7 arrives in uniform, Mr. Martinez walks off the beach when
8 he sees him. He doesn't run away. Walks right off the
9 beach seeing his police car right there.

10 Salkey had Mr. Martinez and Marroquin get into
11 the car so he could get back to the beach to see where the
12 others ran off to. When he gets back, he tells them to
13 get out of the car, lie face down. He doesn't check the
14 ground first, so we don't know whether there is blood on
15 the ground.

16 There is no mention seeing blood on the
17 defendant's jeans or boots before that. He says that he
18 saw blood on Mr. Martinez's hands on the scene, but there
19 are no photos taken of that. Even with a cell phone, no
20 photos are taken. Nothing to preserve what he saw on
21 Mr. Martinez's hands. And not one, not one of the
22 numerous detectives who interviewed Mr. Martinez, said
23 anything about seeing blood on his hands.

24 Now, it's a different story, because with
25 Marroquin, with Marroquin, there are photos taken of his

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1 hands. Somebody sees it, and they take pictures of his
2 front, back, side. And if there were blood on
3 Mr. Martinez's hands, presumably somebody would have done
4 that.

5 Then there was a CSU forensic investigator,
6 Detective Mulvaney, and he testified with respect to his
7 investigation of Michichi's car. He testified that he
8 took photos of everything, that he swabbed everything and
9 that he took numerous swabs, and was paying very close
10 attention to all sorts of issues with regard to
11 cross-contamination. And there was no blood found
12 anywhere. There was no blood found anywhere in that car.

13 Detective Broderick is the detective I have
14 mentioned before is the person who found the machete and
15 takes a picture by the cell phone but does that after
16 hours when the tide came out. He placed the machete in a
17 large paper bag, and the knife was entirely enclosed
18 within the paper bag, which contradicts Carlito's
19 testimony.

20 They take Martinez back to the precinct, and the
21 the Detective Gilday comes essentially says the bandana,
22 the hat, the jeans, the shoes, throw everything in the
23 bag.

24 You heard Emily Head -- she was the DNA expert:
25 We have absolutely no idea where any of this comes from.

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3220

1 So it could have been on one thing, another.
2 Could have been when they put them on the ground outside
3 the car. Nobody knows where it comes from.

4 And essentially what Emily had testified to is
5 that the packaging of the boots and the jeans together was
6 improper because it could result in cross-contamination.
7 She testifies transfer of DNA can happen in many ways,
8 primary and secondary. Could have been on the sneaker or
9 bottom of the shoe. Could have been on the ground. Could
10 have been on a boot or jean. Could have been splattered
11 through the air. You probably remember that testimony.

12 But given the way that the evidence was
13 maintained in this case, where the evidence was collected
14 in this case and the limited amount of DNA that she found,
15 that was found on Mr. Martinez's clothing, there's just no
16 way to tell where it came from. Just no way.

17 Let's talk a little bit about the statement that
18 was made, allegedly.

19 Detective Cintron was the first person who spoke
20 to Mr. Martinez at the 101 Precinct, but he didn't testify
21 here. We read a stipulation. Detective Cintron and
22 Detective Ferrufino are the New York state police officers
23 who get the statement from Mr. Martinez with regard to the
24 Baby Blue homicide.

25 Then there's DePietro and Aponte, who get a

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1 statement from Mr. Martinez with regard to the murder of
2 Nestor Moreno.

3 And ultimately, Detective Ralph Rivera, who gets
4 the statement from Mr. Martinez with regard to the
5 Argueta-Torres homicide.

6 Here's what we learned. Defendant went to work
7 at 7 o'clock on March 16, 2010. He was arrested shortly
8 after midnight. He was smoking marijuana and was drinking
9 the night before.

10 7 o'clock in the morning on March 16th, they
11 start questioning him. He's already been up for 24 hours.
12 They don't conclude their interrogation until 5 o'clock in
13 the morning on March 18th.

14 Now, we don't know who had contact with
15 Mr. Martinez at every point of those hours. Obviously, he
16 was arrested at the scene, brought in, processed,
17 photographed. People taking clothing. People were taking
18 statements. And they go on for hours and hours and hours.
19 You heard the testimony. It wasn't where they say, what
20 happened, and they take a statement. They were in there
21 for hours interrogating.

22 Not one of the law enforcement officers that
23 interrogated him for all of those hours, not one of them,
24 would acknowledge to you that they said anything to induce
25 him.

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1 Now, when you take a look at Cintron's
2 statement, the statement that Cintron got, and see how the
3 statements develop over the course of the night, that
4 doesn't make any sense. In fact, they tell you that from
5 7 o'clock in the morning on March 17th until 5 o'clock in
6 the morning on March 18th, he never yawned, never asked to
7 go to the bathroom, never appeared as if he was tired.
8 Never, ever, ever once even indicated: What am I getting
9 out of this? I've been talking to you guys all day long,
10 for God's sake. Can I have a sandwich? They wouldn't
11 even acknowledge they somehow induced him.

12 Look at the progression of the statement. In
13 Ferrufino's testimony, he sort of slipped. When he got to
14 the 101 Precinct after Cintron had already taken a
15 statement, he's adamant. He doesn't induce Martinez in
16 any way but also indicates he was speaking to Martinez or
17 Little Lonely. He was careful not to say that about
18 Martinez, but it slips out when he speaks about someone
19 else. Yeah, I got him to make a statement.

20 People don't operate that way. Nobody spends
21 24 hours talking about this without thinking: What am I
22 getting into? Are you going to take my family? Are you
23 going to charge me?

24 Doesn't happen. It's illogical.

25 Of course, we have no audio, no video. Why?

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3223

1 Oh, it's not policy. It wasn't policy to take video or
2 audio off site.

3 If you were in Nassau County or Suffolk
4 County -- and it's the policy of the Queens DA's office,
5 but we have no audio or video, none. And he's there for
6 24 hours being questioned.

7 And then you had Agent Heslin, H-E-S-L-I-N.
8 He's the FBI agent who comes in, and he's very
9 professional. Comes in. Big guy up there. And I picked
10 him up at Rikers Island, and he made a statement. Great.

11 Then what happened, Agent?

12 He's confessing and giving him all this good
13 stuff. I had to rush him over to arraignment.

14 They didn't need to do that.

15 Then what did agent Heslin do? Messes up all
16 his dates on the 302. Beautiful.

17 And who is better than case Agent Tariche? You
18 would have thought he was never allowed to curse before.
19 There was some great stuff.

20 The statements aren't reliable. It is clear
21 they said something to him. The question to you is: Why
22 won't they just acknowledge it? If that's the way it
23 happens, why don't they just acknowledge it to you?

24 It implies there is something wrong. There's
25 something wrong.

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1 And you've already heard testimony that the
2 Government adopted from Sosa, that he signed the statement
3 that he didn't want out. That was okay.

4 Then there was Jose Avila. He talked about
5 Argueta and Torres, and he signed a statement. He just
6 didn't understand. You have these statements, but they
7 are really suspect. They are really suspect.

8 We also had a lot of phone records. And there
9 were pretty charts, color-coded charts, with regard to
10 phone records. But what is interesting, it was never at
11 issue in this case that these people knew each other. No
12 one ever denied they knew each other, so this whole idea
13 they are calling one another, it really doesn't get you
14 anywhere.

15 And the phone records can't tell you who is
16 holding the phone, they can't tell you who is on the
17 phone, and they can't tell you the content of the phone
18 call. So just the connection, an undisputed connection,
19 really isn't helpful to you in your deliberations.

20 With regard to the cell site information, you
21 heard their expert when he was on the stand. He had a
22 laundry list of things that could cause a phone call to
23 ping off a tower not close to it. And at the end, you
24 could be two and a half miles away. Can you be in the
25 area? Sure you can, but it doesn't mean that's what is

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1 going on if you are right there.

2 He testified to things like the weather, wind,
3 water, what kind of phone you will use, what kind of cell
4 tower. All of those things can affect where a cell pings
5 off of when it is trying to make a call.

6 All of those things, DNA evidence, statements,
7 cell tower evidence, when it comes down to it, you still
8 have to rely on the cooperators. No question about it.

9 Finally, there was Charles Hopkins. He kind of
10 reminded me of Mr. Magoo, that kind of face. He had no
11 special education, no special training from anybody with
12 any special organization. Claims he belongs to AFTE, but
13 he never went to meetings, never published an article,
14 never held an office, never certified.

15 He was from the old school, stuck in his ways.
16 Even though the National Academy of Science released a
17 report the mere theory is to prove the uniqueness and
18 criticized the standards list and reliability that Hopkins
19 employed, he wouldn't budge.

20 At some point, everybody thought the world was
21 flat, and that was proven wrong. What the National
22 Academy of Science is saying, hey, the standard you guys
23 are employing to call it a match is very subjective, which
24 can change from you to you to you to you, depending what
25 your parameters are.

Summations - Macedonio

3226

1 There were numerous inconsistencies. Talked
2 about the firing pin being circular when it is in fact not
3 possible. And when he tried to get around that, he was
4 again talking about the subjective nature. He said, well,
5 one could view it that way.

6 He said the extractor marking on the casings
7 could identify the casing that is coming from the gun, but
8 in their report -- and we're talking about the silver gun
9 he used in the same three homicides. In his report, there
10 is actually a spot for that. Is there extractor marks?
11 It wasn't in any of his reports.

12 He finds a match between the casings from Nassau
13 and the casings from Suffolk. He is saying casings match,
14 so it has to be the same. But the bullet doesn't match.
15 The bullet measurement eliminates this from coming from
16 this gun. The bullet measurements are objective, not
17 subjective. He tried to explain his way.

18 I'm sure you remember Mr. Levine went into great
19 detail about the measurements that Nassau County made that
20 were off. He tried to explain it away. Well, a
21 thousandth of an inch. But an inch is an inch is an inch.

22 When you are walking around your house and you
23 have a ruler and you are measuring something, you don't
24 take three other rulers out to make sure it is right. We
25 are talking about people who are supposed to be

Summations - Macedonio

3227

1 scientifically trained, trained to measure in thousandths
2 of an inch.

3 He made no effort to remeasure the bullet, and
4 he certainly acknowledged the difference in the
5 measurements were too big to put into that analysis. So
6 his analysis is simply unreliable.

7 Yeah, you can see through there. It follows
8 through from one slide to the other. But when you follow
9 down the slide, one thing doesn't conduct to the other.
10 It was visible.

11 So the analysis that it is definitely the same
12 gun, identical, doesn't work in this case.

13 This isn't a case of about not -- this isn't a
14 case about just what happened, right? We've acknowledged
15 that. This is a case about why it happened.

16 You need to keep in mind that having brought the
17 charges the way they did, this is not the time to give the
18 Government a break for having a weak case. It's not the
19 time to give them a break for having to rely on violent
20 criminals, for having to rely upon guilt, and not the time
21 to give testimony a break where the Government bought and
22 paid for. Make no mistake here. There can only be a
23 verdict of not guilty here unless you are willing to
24 completely credit the testimony of the cooperators in this
25 case.

Summations - Macedonio

3228

1 Pay careful attention when the Judge charges you
2 on the law, particularly with the elements of the offense,
3 multiple conspiracies. Strict scrutiny. And you must
4 consider individually and separately each count as to each
5 defendant.

6 This is, I believe, what part of the charge will
7 be with regard to maintaining and increasing one's
8 position within MS-13. This is what I've really been
9 harping on throughout my summations.

10 Among other things that the Government must
11 prove, the evidence must establish beyond a reasonable
12 doubt that a defendant's purpose in committing the crime
13 was to maintain or increase his position in the
14 enterprise. A defendant cannot be convicted for acting to
15 improve or maintain someone else's position in the
16 enterprise, and random acts of violence are not enough.

17 As I said to you when I started this afternoon,
18 I think this has been a difficult case to be part of. But
19 you can't use that as a reason to neglect your duties.

20 With regard to each of the charged murders,
21 there is abundant reasonable doubt that the crimes were
22 not committed as a pattern of racketeering or to increase
23 the position with MS-13.

24 You will have access to all of the testimony.
25 You will be able to have anything you want read back.

Summations - Macedonio

3229

1 It's imperative that you do so. Doing anything less would
2 mean that you would be giving up the oath that you gave
3 when you started in this case.

4 You have some really tough decisions to make,
5 and they are not popular ones, but the decision I'm asking
6 you to make is legally sound. The Government has failed
7 to establish the crimes charged were committed by
8 Mr. Martinez and that they were committed by Mr. Martinez
9 for the purpose of maintaining or increasing his position
10 in the MS-13. And since they have failed to establish
11 those elements, the only true verdict is one of not
12 guilty.

13 Once again I thank you very much for your
14 attention. I know it is very hot in here, and I'm sorry
15 for talking so long.

16 THE COURT: Members of the jury, we'll take a
17 break now so we will not have to interrupt the next
18 summation. We'll take a ten-minute break now. Don't
19 discuss the case.

20 (Continued on the following page.)
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25

Summation/Rantala

3230

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(The jury enters the courtroom.)

THE COURT: Please be seated.

I know it's really hot in here. We called first thing in the morning, we knew, and we have been working on it. I'm told they are blowing cold air into the room and we have opened that door as well to try to help. I hope we can make it through the end of the day.

You will now hear counsel for Mr. Ortega.

MS. RANTALA: Thank you, your Honor.

We are almost done, thankfully.

This case is really simple. The government tried to create quite the picture collage for you using a false confession pried right out of Carlos Ortega without so much as a reporting with either a video or an audio, using testimony from cooperators who are desperate to stay out of prison or to lessen their sentences. That's what this case is about.

I just wanted to cover a couple of the items that the government brought up in their closing summation just to clarify a little bit.

The government's case is not overwhelming and it's not airtight. Nothing is that overwhelming or airtight. There are so many different gaps in this case.

The snitch issue, Calderon, had no idea who said

Summation/Rantala

3231

1 that there is more than one case going on in this
2 courthouse. He basically said he doesn't know. He
3 doesn't know.

4 Tattoos on the defendant. How many did he have
5 when he got arrested on March 26th of last year? Zero.
6 Not even one anywhere. That's how many tattoos he had.
7 So this was obtained after his arrest while he was in
8 jail, probably to provide protection for himself in jail.

9 And the article in the Spanish language? It's
10 not evidence of anything. His name certainly isn't in
11 there. He lived in Brentwood. Don't forget, that's where
12 the crime took place. So that's something that happened
13 in his neighborhood. Maybe he knew something about some
14 people that have been involved with it, but he just had it
15 there, he didn't have one from a Baby Blue, he didn't have
16 one from any other murder.

17 As far as telephone calls, there are no times on
18 the calls on the chart. We don't know if it was Carlos'
19 phone.

20 As far as the Quijada murder, there is no
21 evidence that Carlos Ortega ever carried a switchblade.
22 No evidence from anybody in this trial. He might be
23 guilty of hanging out with MS-13 members, but that's no
24 crime. There is no crime -- you can't be guilty by
25 association in this kind of case.

Summation/Rantala

3232

1 He did not commit RICO. He did not commit
2 conspiracy to commit RICO or any of the crimes he is
3 alleged to have done in this case.

4 Most importantly, he never fled. He never left.
5 Two years later, they finally get arrested. Arguably, he
6 was working at the L&K and you heard testimony about that.
7 Someone needed cooperation points, that's what I am
8 inferring from that, to get their sentence lessened or to
9 stay out of jail.

10 You heard that he was born in El Salvador in
11 1989, raised in a family with four sisters. You heard all
12 of that. Less than two years of education, which becomes
13 very important in this case. Came to the United States
14 when he was 18, in 2007 or 2008. He wasn't some big
15 homeboy from El Salvador. He was already here.

16 He worked with L&K. You heard from Luis Kane he
17 was working there for three to four years. Very good work
18 record, never had a problem with anybody. He worked
19 there. That's where they arrested him. That's where he
20 was arrested.

21 Unfortunately, he made the choice to hang around
22 MS-13 members at some point in time. He was not guilty
23 when he first came to court. He was not guilty when he
24 was arrested. And he still remains not guilty of these
25 charges.

Summation/Rantala

3233

1 It's basically my job to try and bring the facts
2 and the law together in this case. Carlos couldn't do it
3 by himself. This is a very complicated case. The judge's
4 basic job is to make sure the evidentiary rules are
5 applied and to run the trial in the proper manner.

6 The prosecutor is trying to get justice and they
7 hope for a conviction in this case obviously. You agreed
8 to listen to all the evidence. You will hear a lot in the
9 jury charge. I won't get into much, if any, of them here
10 today. You have agreed to listen to all the evidence. We
11 are positive you have all been very attentive in this
12 case. Your lives will get back to normal when you finally
13 get done with this case, thankfully, I'm sure you are
14 saying in your heads, and basically it's a very important
15 few weeks for Carlos Ortega.

16 Now, before we get to the poster boards, there
17 is one Tony Guevara that testified. You found out he is a
18 professional cooperator. He has been cooperating since
19 2005. He hasn't been sentenced yet. You heard all about
20 the cooperators. I will not repeat everything Ms.
21 Macedonio went into very competently.

22 He is walking around outside, green card status,
23 help, the whole nine yards. I won't repeat all that.

24 Now, let's get into the nitty-gritty why Carlos
25 Ortega is not guilty of any of these charges. Let's start

Summation/Rantala

3234

1 with the David Sandler murder.

2 There is no blood on his clothes for the David
3 Sandler murder. No DNA. No fingerprints. No fleeing.
4 We talk about Aaron Galan. He could not identify the
5 shooter. He certainly didn't identify Carlos Ortega. He
6 couldn't see the shooter.

7 Francis Braun, he is the one that found the
8 bodies. He didn't see the shooter. We still have no one
9 that can identify the shooter.

10 Let's move over to Jodi Rios. She found the
11 projectile near the telephone pole north of Second
12 Avenue.

13 I will turn on the elmo here and hopefully this
14 will work. This was evidence that was admitted as 3500
15 JR.

16 MR. LONDON: I think we need Mr. Tierney to turn
17 the lights down.

18 MS. RANTALA: We get government help.

19 MR. LONDON: He is the light monitor.

20 MR. DURHAM: It will cool things down.

21 MS. RANTALA: Good thought.

22 So Jodi Rios testified that there is this, I
23 think this was C over here is where that if, I'm not
24 mistaken, or it was B, one of these areas is where -- up
25 here actually, this is where the projectile was found.

Summation/Rantala

3235

1 It's across the street from the beauty school, and that's
2 just one of the exhibits.

3 Here is the Exhibit 234, which basically has
4 some kind of tire tread or something next to what is the
5 projectile here. What did she testify about that
6 particular picture? That projectile could have come from
7 anywhere, from anywhere. It was found there under some
8 snow after it melted with a metal detector. Could have
9 been picked up by anything, shoes or a tire tread. Could
10 have been there any length of time. Then she testified
11 this could have been a footprint or tire tread.

12 As far as one of the shots about the location,
13 there is that infamous pole that's where that projectile
14 was found. Another one was found over here, and you will
15 hear about that a little bit later. Somewhere over near
16 this parking lot, and the bodies were found up there,
17 which you have heard so much testimony about where those
18 were found.

19 The most difficult part is getting them off the
20 blinder clips.

21 MR. LONDON: That's my job.

22 MS. RANTALA: Jimmy Sosa. You remember Ms.
23 Macedonio talking about Jimmy Sosa. He has got all kinds
24 of issues. He paints quite a tale of international
25 intrigue, that's for sure.

Summation/Rantala

3236

1 He has the cooperation agreement. Ms. Macedonio
2 did a great job telling you all about this, facing life in
3 prison, S Visa, witness security program, just to
4 reiterate all that up here.

5 But he lied when he started cooperating, did he
6 ever start telling the truth? I don't know. He testified
7 basically he was figuring out the federal snitching for
8 benefits system. He was trying to figure it out. He
9 couldn't quite figure it out yet: I had just arrived in
10 federal system and didn't know how it worked.

11 He found out pretty quick. He didn't know yet.
12 And he didn't want to get involved in trouble either, so
13 he lied. But he did say that the shots were fired north
14 of that light pole basically.

15 I'm going to give Mr. Tierney some exercise.

16 Here is the light pole (indicating). Here is
17 the car where the bodies were found. That's where Mr.
18 Sosa is saying the bullets were fired. How could one get
19 here and one way over here somewhere?

20 Don't forget his MS-13 obligation to lie. What
21 is he lying about and when and to whom?

22 He was very reluctant to admit when he was
23 testifying about his priors, about the plan -- there was
24 no plan. Yes, there was. No, there wasn't. Yes, there
25 was. You basically wrote a statement that says you agreed

Summation/Rantala

3237

1 to plan to rob this poor man.

2 He also didn't want to admit his guilt in the
3 murder of David Sandler. That's because he did it with
4 Perdido. He didn't want the full blame. He is trying to
5 backtrack and say no, that wasn't me. He downplayed his
6 involvement to get that golden cooperation agreement.
7 Once the inmates get a cooperation agreement, they can
8 eventually get out of prison.

9 It is in his best interest to lie. He said
10 that. He admitted to that to the police and now to you.

11 Now, we have Mr. Mark Moorman testify. He had
12 -- I believe he was at the K&K Soccer Club, which is in
13 the left upper-hand corner of Exhibit 201. He saw two
14 medium build men regarding the shooting. He didn't see
15 any facing, but he did see that there were bodies ten feet
16 south of the K&K sidewalk, where about that car is in that
17 particular picture. That's in the middle of the picture.
18 We have collaboration where the bodies were and evidence
19 to that effect as well.

20 Roy Sineo was one of the ballistics people that
21 testified. He found that bullet in the east parking lot
22 over here. He made this. I believe he did this fancy
23 diagram. I have agreement to use this. 17 represents the
24 bullet that was found all the way over here, over near
25 this parking lot from way over here? I don't think so.

Summation/Rantala

3238

1 He compared it anyway to the bullet from Aaron
2 Galan, when he underwent surgery, it was inconclusive. So
3 he is trying to match a couple of projectiles, one that
4 could have come from anywhere and the other one was
5 already somewhere like a half a block away.

6 Only thing he could say with any certainty was
7 it was from a gun of similar make and model. Could have
8 been from two different guns. Could have been from two
9 different times. He didn't know when those projectiles
10 were there. And remember, he had a list of 25 different
11 gun types on him and his working papers of guns, the types
12 of guns that these projectiles could have come from.

13 Charles Hopkins testifies later that each of
14 these 27 different types of guns could have thousands, if
15 not tens of thousands of guns in circulation out there.
16 We are talking exponentially a certain number of -- high
17 number of guns out there. And Sineo, Roy Sineo was not
18 certain of anything as far as matching.

19 Carla Santos, Ms. Macedonio went thoroughly into
20 what Ms. Santos is all about, la mania. A mother would do
21 anything for her child, anything. We found out she did
22 just about anything. When she needs something, she
23 commits a crime. She robs. She commits burglary. She
24 lies to the police. Don't forget her priors, perjury.
25 Perjury is lying on a sworn affidavit or lying in a

Summation/Rantala

3239

1 courtroom.

2 I submit to you she was lying in this courtroom.
3 She has no reluctance to lie. But what is she doing? She
4 is walking around under the witness security program free,
5 free of any charges. You heard about that ad nauseam.
6 The government paid her 90 to \$100,000 on her behalf,
7 despite the murder conspiracy she admitted to right there
8 on that stand. She wasn't even charged with it and never
9 will be. Never will be.

10 She told agents more than one time that Perdido
11 and Junior murdered Sandler. That was the word on the
12 street. That's what she told to those agents more than
13 one time.

14 There was no mention of the defendant there,
15 Carlos Ortega, there in those two times. And what she did
16 testify, though interesting, Carlos Ortega is no leader.
17 Okay. I will take that.

18 Carlos Ortega didn't tell her on the phone he
19 did anything. He said something about hot with the cops.
20 That's not saying he did anything.

21 Let's move to the Mario Quijada murder. Again,
22 we have no blood on the defendant or his clothes at any
23 time. There is no DNA linking anything, nothing to Carlos
24 Ortega, nothing. There is no fingerprints on anything.
25 Nothing. No guns, no knives, no SUV, nothing. And again,

Summation/Rantala

3240

1 he did not flee. Where did he go? He didn't run, he
2 didn't do anything but go back to work, he went back to
3 work, that's how guilty he felt. Okay.

4 Well, we have Joel Calderon, Gasparin. He
5 testified in this court before all of you: If I can get
6 out of a problem, then I may lie. Yes, he admitted to
7 that. This is my duty as a member of MS-13. That was
8 when he was asked as to making a decision what to lie
9 about and when and to whom.

10 He did make several different proffers going all
11 over the place. On 3/21 of '10, no mention of Baby Blue
12 at all.

13 March 30, he has Carlos Ortega on a
14 speakerphone, allegedly hearing everything. Why did he do
15 that? I was trying to look good in front of the agent,
16 whichever one that was. I didn't think my problem was
17 going to be that big. He has Payaso and Demente murdering
18 Baby Blue in that version.

19 Another version, he said Carlos Ortega said
20 something about down south. Now we are getting involved
21 with Carlos Ortega.

22 May 2010, he said something about Carlos Ortega.
23 He added that down under they kill him. Let's see how
24 much worse we can make it for Carlos Ortega. He wants
25 cooperation points. He wants the brownie points now.

Summation/Rantala

3241

1 Here we go right, before all of you, he says Carlos
2 Ortega, he is a big homeboy from El Salvador coming to
3 inspect the cliques. He went from nothing to Carlos
4 Ortega being some kind of general coming in inspecting the
5 troops. Absolutely incredible.

6 But then he added no, he wasn't on the
7 speakerphone, no he wasn't on the speakerphone. Payaso
8 was the only shooter, and Payaso also stabbed. That's
9 what he told you, ladies and gentlemen. Gasparin, his
10 nickname, he wasn't on the beach. He certainly didn't see
11 what happened. It allegedly came from Payaso.

12 Guess what? He lied to the agents to make a
13 good impression, to get those cooperation points. That's
14 what he is all about. He wants to be out of jail. He is
15 in jail and he wants out.

16 Carlos Martinez, he lied all over the place.
17 You heard about his lies from Ms. Macedonio about his
18 priors and the cocaine sale versus possession versus going
19 out the window and all that kind of stuff.

20 He lied regarding his MS-13 membership. He
21 starts out with a bang lying about everything. He lies
22 about his knowledge of any murder whatsoever. He says
23 that Payaso tried to shoot and Payaso and Diego stabbed
24 Baby Blue. So we have people testifying all over the
25 place.

Summation/Rantala

3242

1 He has no knowledge about what happened on the
2 beach, he wasn't there either. He didn't hear the phone
3 conversation. He has no idea if Demente's version of
4 whoever was on the other line was accurate or not. He
5 didn't hear that. He doesn't know who is on the other
6 end. He doesn't even know if Carlos or Ortega was ever on
7 the beach. He has no personal knowledge about anything.
8 Guess what, he saw Carlos Ortega with dry clothes after
9 the fact.

10 He did give some interesting testimony, that
11 guess who he saw in jail at certain points in his career
12 in jail, Gasparin, Calderon, Perdido whose last name is
13 Umanjor (ph), he saw Junior Sosa in jail and also Little
14 Lonely, Marroquin. Get their stories straight so you can
15 get the cooperation points. Get the stories straight.
16 What did they talk about in those jails? What did they
17 talk about?

18 Let's get into the law enforcement officers and
19 what, if any, evidence they have. Officer Salkey, you
20 remember, tall. Officer Salkey, the second set of
21 fingerprints starts 100 feet away from the first set and
22 the -- at first he said 65 to 70 feet. So he is kind of
23 changing his testimony as he goes. And those first set
24 were at least 15 to 20 feet away from the body.

25 You heard about when he testified Mr. London

Summation/Rantala

3243

1 asked about how far is it from the witness stand to the
2 corner of the courtroom, that's probably not even 45 feet,
3 so we have probably a distance of two caddy corner
4 courtrooms from the body to where the second set of
5 footprints start.

6 Do we have any pictures of these said
7 footprints? No. Did anyone ask for crime scene tape to
8 go around the footprints? No.

9 Detective Mulvanerty, he did the SUV inspection
10 and analysis. There is no fingerprints of Carlos Ortega
11 or DNA anywhere, on that SUV, nowhere, stem to stern,
12 nothing.

13 We have Officer Kramer who came in, he also
14 testified there is no crime scene for any footprints.
15 What footprints? Who said anything about footprints? But
16 he did find a black knit cap on the beach.

17 If these pictures and the testimony are to be
18 believed, this is allegedly Carlos Ortega. What is he
19 wearing? Certainly not a black knit cap.

20 And Detective Markowski. He came on the scene.
21 There is no mention of footprints again, no pictures, no
22 crime scene tape regarding any footprints.

23 He sent whatever switchblade and knife blade,
24 et cetera, that he found for testing, and guess what, did
25 you hear about any results from any of these items? No,

Summation/Rantala

3244

1 because there are no results, no DNA, no fingerprints
2 found on any of those weapons that were at the beach.

3 And Detective Broderick, he found the machete in
4 the water. Interestingly, and Ms. Macedonio brought this
5 up, he took out his trusty cell phone and took a picture
6 of it. Did any other agent or law enforcement officer in
7 this courtroom do that? Did they ever bring their own
8 equipment to do anything other than written statements or
9 anything like that? This one did.

10 Detective Yanes sent the machete for testing.
11 We didn't hear about results. Lauren Cifuentes and Wayne
12 Jefferson, they don't remember Carlos Ortega. They
13 wouldn't be able to ID him.

14 Now, cell phone records. They are interesting,
15 noteworthy, I suppose, for television and all. But David
16 Edwards testified he cannot say who is using the phone,
17 where the call was placed, where the call was received,
18 the duration of the call, if a call was missed, if a call
19 went to voicemail, if a call could not ring to the
20 recipient's cell phone, you could see that on the sending
21 phone, wouldn't see it on the recipient's phone record.

22 And then Eduardo Orellana, no cell tower
23 information for any phone number ever been attributable to
24 Carlos Ortega. Nobody knows where he was any time he ever
25 placed or received a call. So even if the timing were to

Summation/Rantala

3245

1 be established of any of these calls, we don't know where
2 the phones were, certainly don't know where Mr. Ortega's
3 phone, if it even was his phone, was. He gave a
4 statement. Allegedly in his statement there was another
5 phone number all together in his statement that belonged
6 to him. There is no information about that one.

7 Well, now, let's get to the statement of Carlos
8 Ortega. Before that, let's hear what we should have but
9 don't. Suffolk County Police Department, they record
10 statements, post arrest statements. That was testified to
11 by Detective Rivera.

12 Detective DiPietro said, testified, testified
13 that it's preferable to use video or audio recording over
14 just taking notes. Preferable. Why? Because you can see
15 and hear everything. You can get the demeanor of the
16 arrestee. You can get the subtleties how things are being
17 said over just taking notes.

18 Nassau County PD also and the DA offices both
19 use recording. Detective Aponte came and testified and
20 said both of those departments routinely video or
21 audiotape their post arrest statements. Detective Aponte
22 testified about this tortured process of making a written
23 statement of a non-English-speaking arrestee. It's
24 torture, and I will show you how in just a minute. You
25 know how to relieve that torture? Get a tape recorder and

Summation/Rantala

3246

1 just press a button. That's how. Then we wouldn't have
2 the questions about what was really said.

3 And don't forget Detective Broderick, who
4 actually used the cell phone. That isn't something that
5 needed to be done, the audio or videotaping of Carlos
6 Ortega's statement? Then he would know exactly what he
7 said.

8 We have Agent Tariche. His Spanish proficiency
9 23 years ago was 3 plus out of 5. Maybe, I don't know,
10 what is that, a C plus? We have he testified he found a
11 letter from Daylight. Basically there is no mention of
12 any crime committed by Carlos Ortega in this letter
13 whoever Daylight is.

14 But let's get the consent to search form. How
15 did -- let me go back to the arrest. First of all, there
16 was no search warrant. He did testify there was no search
17 warrant done in this case, that's issued by the Court. He
18 testified to allow a search of somebody's residence and
19 belongings. That wasn't done in this case by choice. It
20 wasn't done.

21 The consent to search form, how was that done?
22 After he was arrested by six law enforcement officers,
23 they took him to his house. Six of them, not just one or
24 two. They went over the consent to search form in his
25 driveway when he is surrounded by law enforcement

Summation/Rantala

3247

1 officers. That's not any kind of pressure or coercion, is
2 it?

3 Do you remember his mistranslation to a
4 completely opposite result of the second point of the
5 consent to search form? In court he testified that number
6 2 says they have informed me they have a right to search
7 through my things. What it was supposed to be, and he
8 testified on Mr. London's cross: I have been informed
9 that I have the right to refuse the search.

10 What else has he mistranslated? What else?
11 How did he had to show where Mr. Ortega had to sign the
12 consent to search? With an X. How did Carlos Ortega sign
13 his signature? Printed it, like a school child. And we
14 have the stipulation of Carlos's uncle, Valentin Andrades,
15 who testified he had less than two years of education
16 because of health problems.

17 Did Agent Tariche ask about education? No. We
18 don't know what he would have done differently had he
19 asked. He didn't bother to ask.

20 So we have Agent Tariche and the other law
21 enforcement officers. They found hunting knives, some
22 larger knife and a baseball bat. And guess what, he
23 testified and admitted finally, reluctantly, that he had
24 no information that any hunting knife had ever been used
25 in a Quijada murder, none. That's what he testified right

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1 up there. Reluctantly, I might add, remember that, how
2 reluctantly that had to be drawn out.

3 Did they do any kind of DNA testing of anything
4 they found in Carlos Ortega's room? No. Not one single
5 solitary test. That was by choice. You know why?
6 Because there was no evidentiary value, that was why, and
7 basically Agent Tariche testified that.

8 Guess what? Did they find the gun there? No.
9 There is no gun there.

10 The Miranda rights waiver. Again, never having
11 asked Mr. Ortega's education, what kind of education he
12 ever received, how did he end up having to be told where
13 to sign?

14 Let's look at, Agent Tariche testified he went
15 over each and every one of these rights and every
16 paragraph he wrote or read to him, or whatever means of
17 conveyance it was made to Carlos Ortega, Agent Tariche put
18 an X where Carlos Ortega had to make his mark.

19 The second paragraph, there is another X, and so
20 on and so on and so on down the road and where did he have
21 to sign over here, you have to sign there. What did he
22 do? He printed his name like a school child.

23 MR. DURHAM: For the record, what is being shown
24 as Government Exhibit 250 C has highlighting on it.
25 That's not the document in evidence.

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1 THE COURT: That lighting was added by Ms.
2 Rantala. That was not part of the document in evidence.
3 She is just showing you what she is referring to.

4 MS. RANTALA: Thank you.

5 How did this statement come to be, this written
6 statement that Carlos Ortega allegedly agreed to and
7 signed? How did it happen? It's not recorded, that's for
8 sure, in any way, shape or form.

9 When we went into, what about the FBI policy of
10 not recording? There is no sensible reason for the FBI to
11 not record post arrest statements of people, especially
12 accused of murder. No sensible reason.

13 Why don't they record them? They can say
14 anything they want when they have somebody that's
15 illiterate. Let's see the process, how tortured it is.

16 We have Agent Tariche interrogated Carlos
17 Ortega. Agent Tariche is translating what Carlos said in
18 Spanish, allegedly to Agent Lopez. Agent Lopez writes
19 down notes in English. And then Agent Tariche takes the
20 translated notes from Agent Lopez and writes them into a
21 Spanish written statement, you know, he using some of his
22 own memory, and that, too -- then after that, he goes back
23 here and he allegedly reads the statement to Carlos, or he
24 has him read it to him, we don't know. We don't have a
25 video. We don't know what happened in that particular

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1 interrogation room.

2 After that, what happens? On the third page of
3 the statement of Carlos Ortega again, this is my
4 highlighting, that is the X that was placed there, that is
5 in evidence, all those Xs were in the evidentiary pieces
6 of evidence here. That's where Carlos has to sign,
7 actually, he prints his name like a school child.

8 What about the information contained in that
9 statement? You will get the English version of it and you
10 had it read to you. There is no yelling, La Mara, La
11 Mara, La Mara. There is no word "revolver" in that
12 statement. There is no Carlos Ortega's happiness that the
13 FBI got him instead of the MS-13.

14 You won't see that. It's because it's not
15 there. And there is no statement that Carlos Ortega had
16 anything to do with a physical attack on any beach.

17 If you find that Agent Tariche's testimony is
18 not credible, that means you have to reject Carlos
19 Ortega's statement as evidence completely.

20 Thank you, Mr. Tierney.

21 In a lengthy jury charge you will receive
22 tomorrow morning, I'm sorry, it will be lengthy but it is,
23 and it is a very lengthy case, you are going to hear a lot
24 about cooperating witnesses and ---

25 THE COURT: I'm going to ask, do you think you

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1 will be done in the next ten minutes?

2 MS. RANTALA: Yes.

3 THE COURT: Anyone can't stay for the next ten
4 minutes? Okay.

5 MS. RANTALA: I will not read all of this. I'm
6 not going to read all of it into the record.

7 THE COURT: Not rushing you.

8 MS. RANTALA: You have to bear in mind that a
9 witness who enters into an agreement has an interest in
10 the case, and they have an interest to lie, so pay
11 attention to the cooperating testimony charge. Because
12 it's very important.

13 There is also one for informal immunity of
14 government witness, and that applies to Carla Santos. She
15 is getting immunity. She is not charged with anything.
16 Pay attention because they really are very relevant in
17 this case. The government informers, she is one of those,
18 too. And so are the other cooperators.

19 Prior perjury, again, there has been people
20 committing perjury to police officers on sworn statements,
21 to law enforcement officers. Pay very close attention to
22 that particular one, too.

23 You are also going to hear a lot of actual
24 charge information. There is a paragraph on aiding and
25 abetting. I wanted to point out to you, merely being

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1 present at the scene of a crime, or knowing that a crime
2 is being committed, is or about to be committed, is not
3 enough to suggest to a jury to find that the defendant
4 aided and abetted. Guilty by association doesn't apply
5 for a conviction in this case.

6 As far as murder conspiracy goes, you have to
7 have what's called an overt act. It's buried in the
8 middle of the jury charge. I know it's going to be hard
9 to really concentrate on it, but I have to complete or
10 commit at least one overt act in furtherance of the
11 conspiracy.

12 The agreement to engage in or cause the
13 performance of a crime is not itself an overt act. The
14 overt act must be an independent act that tends to carry
15 out the conspiracy, and it goes on. I'm not going to bore
16 you to tears right now hearing it. You will hear it in
17 its entirety tomorrow.

18 As far as the burden, the government has the
19 burden and it's beyond exclusion of reasonable doubt that
20 before they can get a conviction on any charge, just
21 because you think he might have done something, I'm
22 referring to Carlos Ortega, it's still not guilty. If he
23 probably did it, still not guilty. Possibly did it, not
24 guilty. Some suspicion he did, not guilty. Maybe, not
25 guilty. Might have, not guilty. Clear and convincing,

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1 still not guilty. Strong suspicion, not guilty. Not
2 sure, not guilty. Pretty sure, not guilty. Beyond all
3 reasonable doubt, that's the only way that the government
4 can get a conviction in this case. And they do not
5 deserve that kind of verdict in this case on the evidence
6 that they have produced. They do not. Not on any of the
7 charges.

8 Thank you very much for your time in this case.
9 It's a very important case, as you can tell, it's lengthy,
10 and thank you for your patience and attention. We are
11 confident that you will come to the only possible verdict
12 in this case of not guilty.

13 Thank you.

14 THE COURT: We are going to end for the day.
15 Tomorrow morning we will begin at 9:30 with the rebuttal
16 summation of the government, which I expect will take
17 about 30 to 45 minutes. And then you don't have to bring
18 lunch tomorrow. When you get here in the morning,
19 Michelle will give you a menu, my charge, will take
20 whatever it is, you will be able to eat lunch in the jury
21 room, so we will have a longer day to work with.

22 It's very important that you continue not to
23 discuss the case among yourselves, with anyone else. You
24 haven't heard any instructions on the law so you can't
25 start discussing the case among you and certainly can't

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1 discuss it with anyone else, and it's very important you
2 continue not to read anything related to this case or
3 watch anything.

4 Have a safe trip home and a good night.

5 (The jury leaves the courtroom.)

6 THE COURT: I just want to place on the record
7 one exhibit went up that I guess was not in evidence, is
8 that what happened? Place on the record what it was. I
9 think we had a reference to the feet number? How many
10 feet?

11 MR. DURHAM: It was a handwritten sketch from
12 Detective Sineo. I think what ultimately went into
13 evidence was an electronic evidence. We didn't want to
14 interrupt, so we said we wouldn't object, but I don't know
15 the exact Exhibit Number.

16 THE COURT: I wanted the record to reflect that
17 it went up previously, had some numbers on it.

18 MS. RANTALA: Yes, just to show where the one
19 projectile was, and Mr. Durham did nicely suggest that
20 they wouldn't object to it. I appreciate that.

21 THE COURT: That's fine.

22 We will be putting on ECF the final version of
23 the charge, which obviously will contain the updated
24 Pinkerton charge and multiple conspiracy charge and
25 additional requests of Mr. Levine made, I granted. I

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1 would ask everybody to double-check the cross references.
2 My law clerk is doing that. I want to make sure -- I
3 assume they are going to ask for a copy of it, so I want
4 to make sure the cross references to the various pages are
5 correct within the charge. I can use your help on that.

6 Anything else we need to discuss today?

7 I assume my estimate was about right.

8 MR. DURHAM: I think it is. I will try to keep
9 it about a half hour, but I have a lot to cover.

10 THE COURT: Anything from the defense?

11 MR. LONDON: I want to thank Mr. Tierney for
12 attending to the lights.

13 MR. TIERNEY: My pleasure.

14 THE COURT: Hopefully we will have a cooler
15 courtroom tomorrow.

16 Have a good night.

17 (The trial was adjourned to March 19, 2013 at
18 9:30 a.m.)
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